

## CHAPTER 10. TAXATION OF VARIOUS ENTITIES

### TAX RATES APPLICABLE FOR A.Y. 2021-2022

#### (A) INDIVIDUALS, HINDU UNDIVIDED FAMILIES, AOP'S, BOI'S, ETC -

The rates applicable for the assessment year **2021-22** are as follows:

✓ **For Individuals / HUFs / AOPs / BOIs etc.:**

S L A B S	Senior Citizens	Super Senior Citizens	Others	Basic Tax Rate (%) of Net Taxable Income
	Resident Individuals of 60 Years but not more than 80 years at any time during the PY	Resident Individuals of 80 Years and Above at any time during the PY	Other Individuals, HUFs, AOPs, BOIs etc. (R and NR)	
	Up to 3,00,000	Up to 5,00,000	Up to 2,50,000	NIL
	3,00,001 to 5,00,000		2,50,001 to 5,00,000	5%
	5,00,001 to 10,00,000	5,00,001 to 10,00,000	5,00,001 to 10,00,000	20%
	Above 10,00,000	Above 10,00,000	Above 10,00,000	30%

The rates of surcharge applicable for **A.Y.2021-22** are as follows:

#### Individual/HUF/AOP/BOI/Artificial juridical person

	Particulars	Rate of surcharge on income- tax	Example	
			Components of total income	Applicable rate of surcharge
(i)	Where the total income (including income under section 111A ,112A & <b>Dividend</b> ) > Rs. 50 lakhs but is ≤ Rs. 1 crore	10%	<ul style="list-style-type: none"> <li>STCG u/s 111A Rs. 10 lakhs;</li> <li>LTCG u/s 112A Rs. 5 lakhs; and</li> <li>Other income Rs. 40 lakhs</li> </ul>	Surcharge would be levied@10% on income-tax computed on total income of Rs. 55 lakhs.
(ii)	Where total income (including income under section 111A ,112A & <b>Dividend</b> ) > Rs. 1 crore but is ≤ Rs. 2 crores	15%	<ul style="list-style-type: none"> <li>STCG u/s 111A Rs. 20 lakhs;</li> <li>LTCG u/s 112A Rs. 25 lakhs; and</li> <li>Other income Rs. 80 lakhs</li> </ul>	Surcharge would be levied@15% on income-tax computed on total income of Rs. 1.25 crores.
(iii)	Where total income (excluding income under section 111A , 112A & <b>Dividend</b> ) > Rs. 2 crore but is ≤ Rs. 5 crore	25%	<ul style="list-style-type: none"> <li>STCG u/s 111A Rs. 24 lakhs;</li> <li>LTCG u/s 112A Rs. 25 lakhs; and</li> <li>Other income Rs. 3 crores</li> </ul>	Surcharge would be levied @15% on income-tax on: <ul style="list-style-type: none"> <li>STCG of Rs. 24 lakhs chargeable to tax u/s 111A; and</li> <li>LTCG of Rs. 25</li> </ul>
	Rate of surcharge on the income-tax	15%		

	payable on the portion of income chargeable to tax under section 111A and 112A			lakhs chargeable to tax u/s 112A. Surcharge@25% would be leviable on income-tax computed on other income of Rs. 3 crores included in total income
(iv)	Where total income (excluding income under section 111A, 112A & <b>Dividend</b> ) > Rs. 5 crore	37%	<ul style="list-style-type: none"> <li>• STCG u/s 111A Rs. 40 lakhs;</li> <li>• LTCG u/s 112A Rs. 55 lakhs; and</li> <li>• Other income Rs. 6 crores</li> </ul>	Surcharge@15% would be levied on income-tax on:
	Rate of surcharge on the income-tax payable on the portion of income chargeable to tax under section 111A and 112A	15%		<ul style="list-style-type: none"> <li>• STCG of Rs. 40 lakhs chargeable to tax u/s 111A; and</li> <li>• LTCG of Rs. 55 lakhs chargeable to tax u/s 112A.</li> </ul> <p>Surcharge@37% would be leviable on the income-tax leviable on other income included in total income.</p>
(v)	Where total income (including income under section 111A, 112A & <b>Dividend</b> ) > Rs. 2 crore in cases not covered under (iii) and (iv) above	15%	<ul style="list-style-type: none"> <li>• STCG u/s 111A Rs. 40 lakhs;</li> <li>• LTCG u/s 112A Rs. 55 lakhs; and</li> <li>• Other income Rs. 1.30 crore</li> </ul>	Surcharge would be levied@15% on income-tax computed on total income of Rs. 2.25 crore.

⇒ **Health & Education Cess:** @ 4% leviable on {tax plus surcharge}

⇒ **Rebate u/s 87A:** In case of Resident Individual, whose income does not exceed Rs.5,00,000, there shall be allowed a rebate of –

- 100% of the Income Tax; or
- Rs. 12,500

Whichever is less from the amount of Income Tax.

*Note: The above tax rate is one of the options for Individual's & HUF's. The second option is given in sec 115BAC which is introduced by Finance Act 2020. We shall see sec 115BAC later on with illustrations on it.*

**REFER SUMMARY FOR PROVISIONS:  
ILLUSTRATIONS.**

**ILLUSTRATION 1:**

The profit as per P & L account of an AOP is **Rs. 5,80,000**. The salaries and interest paid to the members are as under:

Members	Salaries	Interest
A	20,000	Nil
B	30,000	10,000
C	10,000	20,000

Expenses of **Rs. 40,000** debited in Profits Loss Account are disallowable under section 43B. Mr. A, Mr. B & Mr. C are the members and the following data is given:

Members	Other Incomes	Share in AOP
A	2,40,000	20%
B	2,30,000	30%
C	2,20,000	50%

**ANSWER:**

Since the total income of all the members excluding the share of income of AOP is below taxable limit and none of the member is assessable at a rate higher than Maximum marginal rate, the tax shall be levied on the AOP at the normal rates applicable to an individual, as per section 167B.

**Total Income of AOP**

Profit as per P&L Account	5,80,000
<b>Add:</b> Expenses disallowed under section 43B	40,000
<b>Add:</b> Salaries & Interest disallowed under section 40(ba)	90,000
<b>Total Income</b>	<b>7,10,000</b>
Tax thereon	54,500
<b>Add: Health &amp; education cess @ 4%</b>	2,180
<b>Total Tax payable</b>	<b>56,680</b>

**Income to be allocated to the members in profit sharing ratio**

Taxable Income of AOP/ BOI	7,10,000
<b>Less:</b> Salaries & Interest paid to members	90,000
Amount to be allocated to members in profit sharing ratio	6,20,000

**ALLOCATION OF TOTAL INCOME OF AOP TO MEMBERS AS PER SECTION 67A**

	Mr. A	Mr. B	Mr. C
<b>Rs. 6,20,000</b> in Profit sharing ratio	1,24,000	1,86,000	3,10,000
<b>Add:</b> Salary	20,000	30,000	10,000
<b>Add:</b> Interest	NIL	10,000	20,000
<b>Income from AOP assessable under the head P/G/B/P</b>	<b>1,44,000</b>	<b>2,26,000</b>	<b>3,40,000</b>
<b>TOTAL INCOME OF MEMBERS</b>			

Share in income of AOP	1,44,000	2,26,000	3,40,000
<b>Other Incomes</b>	2,40,000	2,30,000	2,20,000
<b>Total Income</b>	<b>3,84,000</b>	<b>4,56,000</b>	<b>5,60,000</b>
<b>Tax</b>			
<b>Less: Rebate under section 86</b>			
<b>Less: Rebate under section 87A</b>			
<b>TAX PAYABLE</b>			
<b>Add: Health &amp; Education Cess @ 4%</b>			
<b>TOTAL TAX PAYABLE</b>			
<b>ROUND OFF</b>			

**ILLUSTRATION 2:**

Total Income of AOP is = **Rs. 80,000**

<b>Members</b>	<b>Other Incomes</b>	<b>Share in AOP</b>
A (Individual)	140,000	50%
B (Individual)	80,000	30%
C (Foreign Co.)	90,000	20%

**ANSWER:**

Since, C is assessable at a rate higher than maximum marginal rate, i.e. \_\_\_\_\_%, tax on the income of AOP shall be leviable as under:

(i) on the share of C @ \_\_\_\_\_%

(ii) on balance income @ \_\_\_\_\_%

**TOTAL INCOME OF AOP                      Rs. 80,000**

<b>Tax thereon</b>	
- On Rs. 16,000 @ _____%	<b>Rs.</b>
- On Rs. 64,000 @ _____%	<b>Rs.</b>
<b>Total</b>	<b>Rs.</b>
<b>Round off</b>	<b>Rs.</b>

The share of income from AOP shall not be included while computing the total income of the members.

**TOTAL INCOME OF MEMBERS**

	<b>Mr. A</b>	<b>Mr. B</b>	<b>C</b>
<b>Total Income</b>	<b>140,000</b>	<b>80,000</b>	<b>90,000</b>
<b>TAX PAYABLE</b>	<b>NIL</b>	<b>NIL</b>	

**ILLUSTRATION 3:**Total Income of AOP is = **Rs. 1,00,000**

Members	Other Incomes	Share in AOP
A (Individual)	2,90,000	50%
B (Individual)	1,00,000	50%

**ANSWER:**

Since the income of Mr. A, excluding his share of income from the AOP is more than the maximum amount not chargeable to tax and none of the members of the AOP is assessable at a rate higher than the maximum marginal rate, tax shall be levied on the AOP at the maximum marginal rate, i.e. \_\_\_\_\_%.

TOTAL INCOME OF AOP                      **Rs. 1,00,000**  
 Tax thereon @ \_\_\_\_\_%                      **Rs. \_\_\_\_\_**

The share of income from AOP shall not be included while computing the total income of the members.

TOTAL INCOME OF MEMBERS	Mr. A	Mr. B
Total Income	2,90,000	1,00,000
TAX PAYABLE	NIL	NIL

**ILLUSTRATION 4:**Total Income of AOP is = **Rs. 60,000**

Members	Other Incomes	Share in AOP
A (Individual)	90,000	40%
B (Individual)	80,000	10%
C (Indian Co.)	Nil	20%
D (Foreign Co.)	Nil	30%

**ANSWER:**

Since D is assessable at a rate higher than the marginal rate, tax on the total income of the AOP shall be levied as under:

(i) on the share of A&B	@ _____%
(ii) on the share of C	@ _____%
(iii) on the share of D	@ _____%
<b>Total Income of AOP</b>	<b>Rs. 60,000</b>
Tax thereon	
- on <b>Rs. 30,000</b> @ _____%	
- on <b>Rs. 12,000</b> @ _____%	
- on <b>Rs. 18,000</b> @ _____%	
<b>TOTAL TAX PAYABLE</b>	
<b>ROUND OFF</b>	

The share of income from AOP shall not be included in the total income of the members.

**TOTAL INCOME OF MEMBERS**

	<b>Mr. A</b>	<b>Mr. B</b>	<b>C</b>	<b>D</b>
<b>Total Income</b>	<b><u>Rs. 90,000</u></b>	<b><u>Rs. 80,000</u></b>	<b><u>Nil</u></b>	<b><u>Nil</u></b>
<b>Tax thereon</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>

**TAXATION OF FIRMS**

**SECTION 184: ASSESSMENT AS A FIRM**

A firm shall be assessed as a firm for the purposes of the Act if:

- (i) the partnership is evidenced by an instrument, and
- (ii) the individual shares of the partners are specified in the instrument.

**OTHER CONDITIONS:**

- (a) A certified copy of the instrument of partnership referred above should accompany the return of income of the previous year relevant to assessment year in respect of which assessment as a firm is first sought.
- (b) The copy of instrument of partnership shall be certified in writing by all the partners not being minors, or, where the return is made after the dissolution of the firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.
- (c) Where the firm is assessed as such for any assessment year, it shall be assessed in the same capacity for every subsequent year if there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the assessment as a firm was first sought.
- (d) Where any change in constitution had taken place in the previous year, the firm shall furnish a certified copy of the revised instrument of partnership along with the return of income for the assessment year relevant to such previous year.
- (e) Notwithstanding anything contained in any other provisions of this Act, where, in respect of any assessment year, there is on the part of a firm any such failure as is mentioned in section 144, the firm shall be so assessed that no deduction by way of any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such firm to any partner of such firm shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession" and such interest, salary bonus, commission or remuneration shall not be chargeable to income-tax under section 28(v) in the hands of partners. [Section 184(5)]

**SECTION 185: ASSESSMENT WHEN SECTION 184 NOT COMPLIED WITH**

Notwithstanding anything contained in any other provision of this Act, where a firm does not comply with the provisions of section 184 for any assessment year, the firm shall be so assessed that no deduction by way of any payment of interest, salary, bonus, commission or remuneration by whatever name called, made by such firm to any partner of such firm shall

be allowed in computing the income chargeable under the head "Profits and gains of business or profession" and such interest, salary, bonus, commission or remuneration shall not be chargeable to income-tax under section 28(v) in the hands of the partners.

<p align="center"><b>CAN SALARY AND INTEREST PAID TO PARTNERS BE DISALLOWED EVEN IF CONDITIONS OF 40(b) ARE SATISFIED</b></p>
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In the following cases, the salary and interest paid by a firm to its partners shall be disallowed even if the conditions of section 40(b) are satisfied.

1. **Where Section 184(5) applies:** If there is a failure on part of the firm as referred to in section 144, then salary and interest paid by the firm to its partners shall be disallowed. Such salary and interest shall not be taxable in hands of the partners.
2. **Where Section 185 applies:** Where a firm does not comply with the technical requirements of section 184, then the salary and interest paid by the firm to its partners shall be disallowed. Such salary and interest shall not be taxable in hands of partner.

<p align="center"><b>SECTION 187: CHANGE IN CONSTITUTION OF FIRM</b></p>
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Where at the time of making an assessment under section 143 or section 144 or section 147 or section 153A it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment.

**KEY NOTE :**

- (a) if one or more partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change, continue as partner or partners after the change or
- (b) Where all the partners continue with a change in the respective shares or in the shares of some of them.

However, nothing in clause (a) shall apply where the firm is dissolved on the death of any of its partners.

**Illustration:**

In the partnership firm M/s ABCD, Mr. A, Mr. B, Mr. C and Mr. D were partners during the previous year ended 31.03.2021. Mr. D retires on 30.04.2021. Therefore, if the Assessing Officer makes an assessment under section 143(3) on the firm for the previous year ended 31.03.2021 on 31.12.2021, he shall make the assessment on the reconstituted firm M/s ABC. However as per section 188A, all the partners namely Mr. A, Mr. B, Mr. C and Mr. D shall be liable for the taxes, interest and penalty of the firm for Assessment Year 2021-2022.

<p align="center"><b>SECTION 188: SUCCESSION OF ONE FIRM BY ANOTHER FIRM</b></p>
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Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by section 187, separate assessment shall be made on the predecessor firm and the successor firm. The predecessor firm shall be assessed in respect of the income of the previous year in which succession took place up to the date of succession. The successor firm shall be assessed in respect of the income of the previous year after the date of succession.

**Illustrations:**

1. From the firm M/s ABC, Mr. C retires on **30.06.2020** → Section 187 shall apply. Assessment for previous year **31.03.2021** shall be made on the reconstituted firm M/s AB. However, the liabilities of the partners shall be governed by section 188A.
2. From the firm M/s ABC, Mr. A, Mr. B and Mr. C retire on **30.06.2020** and Mr. D, Mr. E and Mr. F are admitted → Section 188 shall apply. Separate assessment shall be made on M/s ABC for the period **01.04.2020** to **30.06.2020** and on M/s DEF for the period **01.07.2020** to **31.03.2021**.
3. M/s ABC becomes M/s DBC on **30.06.2020**.  
M/s DBC becomes M/s DEC on **30.09.2020**.  
M/s DEC becomes M/s DEF on **31.12.2020**.  
  
→ This is a case of change in constitution of the firm and section 187 shall apply. Assessment for the previous year ended **31.03.2021** shall be made on the reconstituted firm M/s DEF. However, the liabilities of the partners shall be governed by section 188A.
4. In firm M/s ABC, Mr. B dies on **30.06.2020** and the partnership deed is silent about the death of the partner. → This will result in dissolution of firm and section 187 shall not apply. Section 189 shall apply.
5. In firm M/s ABC, Mr. B dies on **30.06.2020** and the partnership deed provides that the firm shall continue on the death of any partner. → This is a change in the constitution of the firm and section 187 shall apply. The assessment for previous year ended **31.03.2021** shall be made on firm M/s AC. However, the liabilities of the partners/ legal heirs shall be governed by section 188A.
6. From firm M/s AB, Mr. A retires → This is a case of dissolution of firm to which section 189 shall apply.
7. Firm M/s ABC is converted into a private limited company → This is a case of dissolution of firm to which section 189 shall apply.

**SECTION 188A: JOINT & SEVERAL LIABILITY OF PARTNERS FOR TAX PAYABLE BY FIRM**

Every person who was, **during the previous year**, a partner of a firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable along with the firm for the amount of **tax, penalty or other sum payable** by the firm for the assessment year to which such previous year is relevant.

**Illustration 1:**

A partnership firm consisted of partners A, B, C & D during the previous year ended on 31<sup>st</sup> March, **2015** Partner D retired on 2<sup>nd</sup> April, **2015**. The cases of the firm for assessment years **2015-2016** to **2019-2020** are reopened under section 147 on **1.1.2021**. Now, the taxes, penalty and interest for assessment years **2015-2016** and **2016-2017** can be recovered either from the firm or from A or B or C or D or from any of them jointly. The taxes, penalty and interest of



assessment years 2017-2018 to 2019-2020 can be recovered either from the firm or from A or B or C or any of them jointly.

### Illustration 2:

Mr. A was a partner in the firm M/s. XYZ only for a month in the previous year 31<sup>st</sup> March, 2021. Mr. A along with other partners and the firm is jointly and severally liable for the taxes, interest and penalty of the firm for the previous year 31<sup>st</sup> March, 2021. If Assessing Officer is unable to recover the taxes, interest and penalty from the firm for the said year, then he can recover the taxes, penalty and interest of the firm for the said year from Mr. A.

## SECTION 189: FIRM DISSOLVED OR BUSINESS DISCONTINUED

1. Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or any other sum payable under the Act. "

### Illustration:

A partnership firm formed on 1.4.2009 consisted of partners P, Q, R & S up to 31<sup>st</sup> March, 2013. Partner P retired on 15<sup>th</sup> April, 2013 and Mr. X was taken in as a partner on that date. Mr. Q retired on 15<sup>th</sup> May, 2017. Mr. R retired on 31<sup>st</sup> December, 2019 and on that date Mr. Y was taken in as partner. The firm is dissolved on 4<sup>th</sup> January, 2021.

Now, Mr. P, Q, R & S are jointly and severally liable for the taxes, interest and penalty of the firm from assessment year 2010-2011 to assessment year 2014-2015. Mr. X is also jointly and severally along with Mr. P, Q, R & S liable for the taxes, interest and penalty of the firm for assessment year 2014-2015. Mr. X, Q, R & S are jointly and severally liable for the taxes, interest and penalty of the firm for assessment years 2015-2016 to 2018-2019. Mr. X, R & S are jointly severally liable for the taxes, interest and penalty of the firm for assessment years 2019-2020 and 2020-2021. Mr. Y is also liable jointly and severally with Mr. X, R & S for assessment year 2020-2021. Mr. X, Mr. Y and Mr. S are jointly severally liable for the taxes, interest and penalty of the firm for Assessment Year 2021-2022. (Provisions of section 188A)

Mr. X, Y & S are the partners at the time of dissolution and therefore they are jointly and severally liable for the taxes, interest and penalty of firm from assessment year 2010-2011 to assessment year 2021-2022 as per the provision of section 189. They are liable along with the persons referred to in section 188A.

## TAXATION OF FIRMS AND ITS PARTNERS: PROVISIONS IN BRIEF

1. Income of the partnership firm is assessed at a flat tax rate of 30% (+ 12% surcharge where total income exceeds Rs. 1 crore + 4% Health & education cess. LTCG are taxed under section 112/112A and STGG are taxed under section 111A.
2. Shares of partners in the total income of the firm is EXEMPT in the hands of partners under section 10(2A).
3. Remuneration and interest paid to the partners is allowed as deduction to the firm subject to the limits and conditions specified in section 40(b).

4. Remuneration and interest received by the partners shall be taxed in their hands as P/G/B/P under section 28(v). However, salaries and interest which have not been allowed under section 40(b) or section 184(5) or section 185 shall not be added to the income of the partners under section 28(v).
5. Losses of the firm shall be carried forward by the firm and shall not be allocated to the partners.

<b>SECTION 40(b): PAYMENT OF INTEREST, SALARY, BONUS, COMMISSION OR REMUNERATION MADE BY FIRM TO ITS PARTNERS</b>
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Interest and remuneration paid to the partners by a firm are not deductible. However, the interest and remuneration paid to partners by a firm are deductible if all the following conditions are satisfied:

- (i) Payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred as remuneration) is to a working partner. If it is paid to a non-working partner, the same shall be disallowed.

**Explanation: Working Partner** means an **individual** who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner.

- (ii) The payment of remuneration to a working partner and payment of interest to any partner should be **authorised** by and should be in **accordance** with the terms of the partnership deed.

### **CBDT CIRCULAR**

It has been observed that the assessee are incorporating the following kind of clause in the partnership deed:

“The amount of remuneration to the working partner will be as mutually agreed upon between partners at the end of the year”.

The Assessing Officers are now disallowing the deduction on the basis of such clauses for the reason that they neither specify the amount of remuneration to each partner nor lay down the manner of quantifying the remuneration.

In cases where neither the amount of remuneration has been quantified nor even the limit of total remuneration has been specified but the same has been left to be determined by the partners at the end of the year, the remuneration to the partners will not be allowed as deduction in computation of firm's income. **The remuneration shall be admissible only if the partnership deed either specifies the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration.**

- (iii) The payment of remuneration and interest should relate to a period falling after the date of partnership deed. That means, the partnership deed should not provide for payment of remuneration and interest from retrospective effect (i.e. any earlier period prior to the date of partnership deed).

**Illustration 1:**

The partners entered into a partnership agreement on 1.4.2020 and no salary was provided in the deed. On 31.1.2021, the partners entered into an agreement to amend

the above deed with retrospective effect from 1.4.2020 to provide a salary of Rs. 3,000 each per month to each partner.

**Answer:**

Salary paid to partners for the period 01.04.2020 to 31.01.2021 shall not be allowed as a deduction to the firm.

Salary paid to partners for the period 01.02.2021 to 31.03.2021 shall be allowed as a deduction to the firm, subject to the limit specified under section 40(b).

**Illustration 2:**

A & B enters into partnership on 1.4.2020. The partnership deed provides salary of Rs. 3000 per month to A and Rs. 4000 per month to B. On 1.7.2020, an agreement is entered to amend the above deed retrospectively from 1.4.2020 and provide salary of Rs. 6,000 per month to A and Rs. 7,000 per month to B.

**Answer:**

For the period 01.04.2020 to 30.06.2020, salary paid to A & B shall be allowed as a deduction to the firm to the tune of Rs. 3,000 per month to A and Rs. 4,000 per month to B. Thereafter, the enhanced salary paid shall be allowed as deduction. But, the above deduction shall be limited to the amount specified under section 40(b).

- (iv) The payment of interest to a partner should not exceed the amount calculated at the rate of 12% per annum simple interest (any amount in excess will be disallowed).

**NOVEL DISTRIBUTING ENTERPRISES [2001] (KER.)**

Where interest paid to partners on current account was not authorised under partnership deed, in view of the provisions in section 40(b)(iv) impugned interest was rightly disallowed, notwithstanding fact that assessee-firm had recorded said transaction in its books of account and partners had included said amount in their return of income and paid tax thereon.

The petitioner-firm claimed deduction of interest paid to the partners both in respect of capital account and also the current account. The Assessing Officer disallowed the claim in respect of interest on current account on the ground that the partnership deed did not authorise it. The petitioner took up the matter in revision before the Commissioner under section 264 but the same was rejected.

Held that clause 10 of the partnership deed which dealt with payment of interest stated that the net profit or loss after making 12% interest on the capital contribution of the partners, for each year, shall be shared. Since the petitioners had no case that interest related to the capital contribution, the said amount could not be allowed as a deduction in view of the provisions of sub-clause (iv) of clause (b) of section 40. The fact that the assessee-firm had paid interest on current account and recorded it in the books of account and further that the partners had included the said amount in their individual returns and paid tax would not alter the situation. The authorities could act only in accordance with the provisions of section 40(b). In the instant case, the CIT had rejected the claim for deduction of interest paid on current account only because there was no provision in the partnership deed enabling such payment. The disallowance was justified.

- (v) The payment of remuneration should not exceed the following amounts (Any amount in excess will be disallowed).

(a) On the first Rs. 3,00,000 of book profit or in case of a loss	Rs.1,50,000 or at the rate of 90% of the book profit, whichever is more
(b) On the balance of book profits.	At the rate of 60%

**Explanation:** "Book Profit" means the net profit as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in sections 28 to 44D as increased by the aggregate of the remuneration paid or payable to all partners of the firm if such amount has been deducted while computing the net profit.

#### **Analysis of Section 40(b)**

The following aspects may be noted while computing book profits:

- (i) Only the income under the head P/G/B/P is to be taken,
- (ii) Current year and brought forward depreciation is to be deducted. (Section 32)
- (iii) Brought Forward Business Losses will not be deducted. (Section 72)
- (iv) Chapter VI-A deductions are also not to be deducted,
- (v) Remuneration is to be added back if it is debited to Profit & Loss Account,
- (vi) Interest paid to the partners to the extent it is deductible shall not be added back.

#### **CONDITIONS FOR ALLOWABILITY OF REMUNERATION AND INTEREST PAID BY THE FIRM TO ITS PARTNERS**

<b><u>Allowability of Remuneration</u></b>	<b><u>Allowability of Interest</u></b>
1. To a working partner.	1. To a working/ non-working partner.
2. To an individual only.	2. To any partner.
3. Should be authorised by partnership deed.	3. Should be authorised by partnership deed.
4. <b>In the partnership deed:</b> - either specify the amount of remuneration payable to each partner, or - lay down the manner of quantification of remuneration to each partner.	4. Rate of interest should be specified in the partnership deed.
5. Remuneration should not be retrospective.	5. Interest should not be retrospective.

#### **KEY NOTES:**

1. If a firm pays interest to a partner and the partner pays interest to the firm on his drawings, then the interest shall not be netted off. The interest received by the firm from the partners on their drawings is taxable in the hands of the firm as income under the head Profits & Gains of Business or Profession. The interest paid by the firm to the partners is allowable as per section 40(b).

2. Interest paid by the firm to its partners on their fixed capital account, current capital account and loan account is allowable as deduction to the firm provided the partnership deed specifically authorizes the payment of interest on fixed capital account, current capital account and loan account. If the partnership deed authorizes the payment of interest on fixed capital account, then interest on current capital account and loan account shall not be allowed as deduction to the firm.

#### EXPLANATION 1 TO SECTION 40(b)

Where an individual is a partner in a firm on behalf of or for the benefit, of any other person (partner in a representative capacity), then

- (a) interest paid by the firm to such individual otherwise than as partner in a representative capacity, shall not be taken into account for the purposes of section 40(b).
- (b) Interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of section 40(b).

#### **Illustration:**

Mr. X is a partner in a firm on behalf of his HUF i.e. partner in a representative capacity. Mr. X has given a loan to the firm out of his self acquired funds and the firm pays interest of **Rs. 10,000** to Mr. X. The firm also pays interest of **Rs. 15,000** to Mr. X on the capital of HUF.

In this case section 40(b) will not be applicable to the interest payment of **Rs. 10,000**. **Rs. 10,000** interest is allowable under section 36(1)(iii) subject to section 40A(2). The interest payment of **Rs. 15,000** is however subjected to the provisions of section 40(b).

#### EXPLANATION 2 TO SECTION 40(b)

Where an individual is a partner in a firm otherwise than as partner in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of section 40(b), if such interest is received by him on behalf, or for the benefit of any other person.

#### **Illustration:**

Mr. X is a partner in a firm in his individual capacity. He is also the karta of a HUF. The firm pays interest of **Rs. 10,000** to Mr. X on the loan given by HUF to the firm. The firm also pays **Rs. 15,000** to Mr. X on his capital in the firm.

In this case, section 40(b) will not be applicable to the interest of **Rs. 10,000**. The said interest is deductible under section 36(1)(iii) subject to the provisions of section 40A(2). The interest payment of **Rs. 15,000** will however be subjected to the provisions of section 40(b).

#### SECTION 28(v): PROFITS AND GAINS OF BUSINESS OR PROFESSION

Any interest, salary, bonus, commission or remuneration due to or received by a partner of a firm from such firm shall be assessable under the head P/G/B/P.

**Provided** that where any interest, salary, bonus, commission or remuneration **has not been allowed to be deducted under section 40(b)**, the amount not so allowed to be deducted shall not be added to the income of the partners.

**WHETHER REMUNERATION PAID TO THE PARTNER CAN BE DISALLOWED UNDER SECTION 40A(2)**

**Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance under section 40A(2)(a) even though the same is within the statutory limit prescribed under section 40(b)(v)?**

**CIT V. GREAT CITY MANUFACTURING CO. (2013) (ALL)**

**Facts of the case:** In this case, the Assessing Officer contended that the remuneration paid by the firm to its working partners was highly excessive and unreasonable, on the ground that the remuneration to partners (**Rs. 39.31 lakh**) was many times more than the total payment of salary to all the employees (**Rs. 4.87 lakh**). Therefore, he disallowed the excessive portion of the remuneration to partners by invoking the provisions of section 40A(2)(a).

**High Court's Observations:** On this issue, the High Court observed that section 40(b)(v) prescribes the limit of remuneration to working partners, and deduction is allowable up to such limit while computing the business income. If the remuneration paid is within the ceiling limit provided under section 40(b)(v), then, recourse to provisions of section 40A(2)(a) cannot be taken.

The Assessing Officer is only required to ensure that the remuneration is paid to the working partners mentioned in the partnership deed, the terms and conditions of the partnership deed provide for payment of remuneration to the working partners and the remuneration is within the limits prescribed under section 40(b)(v). If these conditions are complied with, then the Assessing Officer cannot disallow any part of the remuneration on the ground that it is excessive.

**High Court's Decision:** The Allahabad High Court, therefore, held that the question of disallowance of remuneration under section 40A(2)(a) does not arise in this case, since the Tribunal has found that all the three conditions mentioned above have been satisfied. Hence, the remuneration paid to working partners within the limits specified under section 40(b)(v) cannot be disallowed by invoking the provisions of section 40A(2)(a).

**SECTION 10(2A): INCOME EXEMPT FROM TAX**

In case of a partner of a firm, his share in the total income of the firm shall not be included in the total income of the partner.

**KEY NOTES:**

The share of a partner in the total income of the firm shall be computed as under:

Total Income of the firm	X	<u>Share of profits of the firm as per the partnership deed</u>
		<u>Profits of the firm as per partnership deed.</u>

**SECTION 10(2A) OF THE INCOME-TAX ACT, 1961 - FIRM - SHARE OF PROFITS TO PARTNER OF FIRM - CLARIFICATION ON INTERPRETATION OF PROVISIONS OF SECTION 10(2A) IN CASES WHERE INCOME OF FIRM IS EXEMPT**

**CIRCULAR NO. 8/2014, DATED 31-3-2014**

1. A reference has been received in the Board in connection with the interpretation of provisions of section 10(2A) of the Income tax Act, 1961 ('Act') seeking clarification as to what will be the amount exempt in the hands of the partners of a partnership firm in cases where the firm has claimed exemption/deduction under Chapter III or VI A of the Act.

2. A firm is assessed as such and is liable to pay tax on its total income. A partner is not liable to tax once again on his share in the said total income.

3. It is clarified that 'total income' of the firm for section 10(2A) of the Act, as interpreted contextually, includes income which is exempt or deductible under various provisions of the Act. It is, therefore, further clarified that the income of a firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of its partners. Accordingly, the entire profit credited to the partners' accounts in the firm would be exempt from tax in the hands of such partners, even if the income chargeable to tax becomes NIL in the hands of the firm on account of any exemption or deduction as per the provisions of the Act.

**For example:**

Total income for the firm before deduction under Chapter VI-A	100 lakh
Less: Deduction under section 80-IA	100 lakh
<b>Taxable Income</b>	<b>Nil</b>

Let's say profits as per books of account are also **Rs. 100 lakh**. There are two partners of the firm sharing profits equally. Now **Rs. 50 lakhs** is credited to capital account of each partner.

CBDT has clarified that although total income of the firm is Nil, yet each partner's capital account is exempt under section 10(2A).

**LOSSES ETC. OF FIRMS**

The losses and unabsorbed depreciation can be carried forward by a firm only.

**SECTION 78(1): CARRY FORWARD AND SET OFF OF LOSSES IN CASE OF CHANGE IN CONSTITUTION OF FIRM**

Where a change has occurred in the constitution of a firm, then nothing shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year.

**ANALYSIS OF SECTION 78(1)**

Section 78(1) provides that where a change in constitution of firm takes place on account of **retirement of partner or death of the partner** then, the firm shall not carry forward and set off the following brought forward losses:

Share of the retired/ deceased partner in the brought forward losses of the firm		<b>X</b>
<b>Less:</b> Share of the retired/ deceased partner in the current year profit		<b>Y</b>
<b>(x - y) can not be carried forward by the firm or its partners.</b>		<b>x - y</b>

**Illustration:**

A firm furnishes you the following data for the previous year ended **31.3.2021**:

P/G/B/P before setting off brought forward depreciation and brought forward losses	8,00,000
Brought forward losses of Assessment Year <b>2015-2016</b>	3,00,000
Brought forward Depreciation of Assessment Year <b>2015-2016</b>	1,00,000

There were four partners A, B, C and D sharing profits and losses equally. On **30<sup>th</sup> June, 2020**, the partner A had retired from the firm. Compute the total income of the firm.

**Answer:**

By virtue of Section 78(1), the firm shall not carry forward and set off the following loss:

Share of retired partner in brought forward losses	75,000
<b>Less:</b> Share of the retired partner in the current profits ( $2,00,000 \times 3/12$ )	50,000
	<b>25,000</b>

Therefore, **Rs. 25,000** cannot be carried forward and set off by the firm. **It may be noted that section 78(1) is not applicable for brought forward depreciation.** Now, the income of the firm for Assessment Year **2021-2022** is as under:

Current Year P/G/B/P	=	8,00,000
Less: Brought Forward Losses		
(3,00,000 - 25,000)	=	2,75,000
Less: Brought Forward Depreciation	=	1,00,000
		<b>4,25,000</b>

**ILLUSTRATIONS****Illustration 1:**

**A partnership firm submits the following information for Assessment Year **2021-2022**:**

<b>(i)</b>	Profit as per P & L A/c.	3,60,000
<b>(ii)</b>	Depreciation as per books of Account	20,000
<b>(iii)</b>	Depreciation as per Income-Tax Act (Current Year)	40,000
<b>(iv)</b>	Brought forward Depreciation	3,50,000
<b>(v)</b>	Bought forward loss	13,000
<b>(vi)</b>	Expenditure not allowable as per Income-tax Act debited in P & L A/c	30,000
<b>(vii)</b>	Interest paid to the partners debited in P & L A/c	
	Partner A (24%)	10,000
	Partner B (24%)	16,000
<b>(viii)</b>	Remuneration paid to the partners debited in P & L A/c.	



	Partner A	1,40,000
	Partner B	1,10,000
<b>(ix)</b>	Other incomes of Partners:	
	Partner A	2,20,000
	Partner B	2,30,000

The Partners A & B share profits and losses equally. Compute the taxable income of the firm and its partners.

**Answer:**

**Computation of Book Profit under section 40(b)**

Net Profit as per P & L A/c	3,60,000
Add: Depreciation as per books	20,000
Add: Expenditure not allowable as per I. T. Act	30,000
Add: Interest to partners disallowed u/s 40(b)	13,000
Add: Remuneration to partners	2,50,000
	6,73,000
Less: C/Y Depreciation as per I. T. Act	40,000
	6,33,000
Less: B/f Depreciation	3,50,000
<b>Book Profits</b>	<b>2,83,000</b>

Therefore, allowable remuneration as per section 40(b) is **Rs. 2,54,700**. Since remuneration paid is **Rs. 2,50,000**, **Rs. 2,50,000** is allowed as deduction under section 40(b).

**Computation of the Total Income of the firm**

Net Profit as per P & L A/c	3,60,000
Add: Depreciation as per books	20,000
Add: Expenditure not allowable as per I. T. Act	30,000
Add: Interest to partners disallowed u/s 40(b)	13,000
	4,23,000
Less: C/Y Depreciation as per I. T. Act	40,000
	3,83,000
Less: B/f Losses	13,000
Less: B/f Depreciation	3,50,000
<b>Total Income</b>	<b>20,000</b>

<b><u>Taxable income of partners:</u></b> <b><u>P/G/B/P as per section 28(v):</u></b>	<b><u>Partner A</u></b>	<b><u>Partner B</u></b>
<b>(i)</b> Salaries	1,40,000	1,10,000
<b>(ii)</b> Interest to the extent allowed	5,000	8,000
P/G/B/P	1,45,000	1,18,000
Other Incomes	2,20,000	2,30,000
<b>Taxable Income</b>	<b>3,65,000</b>	<b>3,48,000</b>
Tax thereon		
Less: Rebate under section 87A	_____	_____
<b>{ Amendment by Finance Act ( no.1 ) 2019 }</b>		
<b>Add: Health &amp; Education Cess @ 4 %</b>		

Tax payable	_____	_____
Round Off	_____	_____

**Illustration 2:**

Smart, Happy and Lucky are three partners of Small & Co., a partnership firm engaged in trading, sharing profits and losses in the ratio of 1:2:3. The Profit & Loss Account of the firm for the year ended **31.3.2021** is as under:

SMALL & CO.			
Profit & Loss Account for the year ended <b>31.3.2021</b>			
	Dr.		Cr.
PARTICULARS	AMOUNT Rs.	PARTICULARS	AMOUNT Rs.
Cost of Sales	25,20,000	Sales	54,60,000
Staff Salaries	6,54,000	Long-term Capital gains	11,40,000
Depreciation	12,30,000	Interest Income	1,50,000
Other Expenses	1,50,000	Other business income	60,000
<b>Remuneration to Partners:</b>			
S     3,24,000			
H     1,62,000			
L <u>2,16,000</u>	7,02,000		
<b>Interest on Capital to Partners:</b>			
S     1,80,000			
H     6,00,000			
L <u>1,80,000</u>	9,60,000		
<b>Net Profit:</b>			
S     99,000			
H     1,98,000			
L <u>2,97,000</u>	5,94,000		
	<b><u>68,10,000</u></b>		<b><u>68,10,000</u></b>

**Other information:**

- (1) The firm has been assessed as firm up to assessment year **2020-2021**.
- (2) The firm has completed all formalities and will be assessable as a firm for the assessment year **2021-2022**.
- (3) The partnership deed of the firm was amended on **30<sup>th</sup> June 2020** with retrospective effect from **1<sup>st</sup> April 2020** to provide remuneration and interest to partners as follows:

	Remuneration	Interest on Capital
Smart (working partner)	27,000 p.m.	Simple interest @ 20% p.a
Happy (sleeping partner)	13,500 p.m.	Simple interest @ 24% p.a
Lucky (working partner)	18,000 p.m.	Simple interest @ 20% p.a
As per the earlier partnership deed the salary was as under:		
Smart	Rs. 15,000 p.m.	
Happy	Rs. 12,000 p.m.	

Lucky                      **Rs. 9,000 p.m.**

Interest was provided in the earlier partnership deed at the same rates.

- (4) Depreciation as per Income-tax Act amounts to **Rs. 9,60,000**  
 (5) Expenses of **Rs. 1,05,000** are not allowable under section 43B.  
 (6) The firm has a carried forward loss of **Rs. 60,000**.  
 (7) The other incomes of the partners are:  
     Smart                      **Rs. 1,20,000**  
     Happy                     **Rs. 3,00,000**  
     Lucky                     **Rs. 2,70,000**

You are required to compute the tax payable by the firm and its partners.

**Answer:**                      **Computation of Book Profit under section 40(b)**

Net Profit as per P & L A/c		5,94,000
<b>Add:</b> Depreciation as per books		12,30,000
<b>Add:</b> Expenditure disallowable u/s 43B		1,05,000
<b>Add:</b> Interest to partners (in excess of allowed limit)		
Smart $1,80,000 \times 8/20 = 72,000$		
Happy $6,00,000 \times 12/24 = 3,00,000$		
Lucky $1,80,000 \times 8/20 = 72,000$		4,44,000
<b>Add:</b> Remuneration to partners		<u>7,02,000</u>
<b>Less:</b> Long Term Capital Gains assessable under Capital Gains		30,75,000
		11,40,000
<b>Less:</b> Interest Income		1,50,000
<b>Less:</b> Depreciation as per I. T. Act		<u>9,60,000</u>
<b>Book Profits as per section 40(b)</b>		<b><u>8,25,000</u></b>
<b><u>Allowable Remuneration as per section 40(b):</u></b>		
On First 3,00,000 of book profits @ 90%		2,70,000
On Balance 5,25,000 of book profits @ 60%		3,15,000
		5,85,000
<b><u>Remuneration allowable as per section 40(b):</u></b>		
Smart: <b>Rs. 15,000</b> $\times$ 3 Months+ <b>Rs. 27,000</b> $\times$ 9 Months	=	2,88,000
Happy: Not a working partner	=	NIL
Lucky: <b>Rs. 9,000</b> $\times$ 3 Months + <b>Rs. 18,000</b> $\times$ 9 Months	=	1,89,000
		4,77,000
Therefore, allowable remuneration is <b>Rs. 4,77,000</b> .		
<b><u>COMPUTATION OF THE TOTAL INCOME OF THE FIRM</u></b>		
<b><u>P/G/B/P</u></b>		
Net Profit as per P & L A/c		5,94,000
<b>Add:</b> Depreciation as per books		12,30,000
<b>Add:</b> Expenditure disallowable u/s 43B		1,05,000
<b>Add:</b> Interest to partners (in excess of allowed limit)		
Smart $1,80,000 \times 8/20 = 72,000$		

Happy $6,00,000 \times 12/24 = 3,00,000$	
Lucky $1,80,000 \times 8/20 = 72,000$	4,44,000
<b>Add:</b> Remuneration to partners	<u>2,25,000</u>
	25,98,000
<b>Less:</b> Long Term Capital Gains assessable under Capital Gains	
	11,40,000
<b>Less:</b> Interest Income	1,50,000
<b>Less:</b> Depreciation as per I. T. Act	<u>9,60,000</u>
	3,48,000
<b>Less:</b> Brought forward losses P/G/B/P	<u>60,000</u>
<b>P/G/B/P</b>	<b>2,88,000</b>
<b><u>Capital Gains</u></b>	
Long Term Capital Gain	<b>11,40,000</b>
<b><u>Income from other sources</u></b>	
Interest Income	1,50,000
<b>Total Income</b>	<b>15,78,000</b>

<b>Tax thereon:</b>	
- on Rs. 4,38,000 @ 30%	1,31,400
- on Rs. 11,40,000 @ 20%	2,88,000
<b>Tax Payable</b>	<b>4,19,400</b>
Add: Health & Education cess @ 4%	
<b>Total Tax</b>	
<b>Round off</b>	

**TAXABLE INCOME OF PARTNERS:**  
**P/G/B/P as per section 28(v):**

	Smart	Happy	Lucky
<b>(i)</b> Salaries allowed as deduction u/s 40(b)	2,88,000	NIL	1,89,000
<b>(ii)</b> Interest to the extent allowed u/s 40(b)	1,08,000	3,00,000	1,08,000
P/G/B/P	3,96,000	3,00,000	2,97,000
Other Incomes	1,20,000	3,00,000	2,70,000
<b>Taxable Income</b>	<b>5,16,000</b>	<b>6,00,000</b>	<b>5,67,000</b>
<b>Tax thereon</b>			

**TAXATION OF CO-OPERATIVE SOCIETIES**  
**FOR PROVISION ON COOPERATIVE SOCIETY REFER COMPENDIUM**

**QUESTIONS FROM PAST EXAMINATIONS**

**Question 1:**

XYZ consumer Co-operative Society furnishes the following particular of its income in respect of financial year **2020-2021**. You are required to work out the taxable income of the Co-operative Society:

	<b>Rs.</b>	<b>Rs.</b>
Income from business		2,50,000
Interest on deposits with bank		10,000
<b>Dividend on investments:</b>	<b>Rs.</b>	
Investments in share of other Co-operative societies	4,000	
Other investments	4,000	
Income from letting of godowns for storage of commodities		20,000

Give reason for your answer.

**Answer:**

**Computation of taxable income for the assessment year **2021-2022****

		<b>Rs.</b>
Income from business		2,50,000
Income from house property		20,000
<b>Income from other sources:</b>		
Interest on deposit with bank	10,000	
Dividend on investments in share of other co-operative society	4,000	
Dividend on other investments	4,000	18,000
<b>Gross Total Income</b>		<b>2,88,000</b>
<b>Less: Deduction under section 80P</b>		
Deduction under section 80P in respect of dividend from other co-operative societies	4,000	
Deduction under section 80P on account of Income from letting of godowns for storage of commodities	20,000	
General Deduction under section 80P	1,00,000	1,24,000
<b>Net Income</b>		<b>1,64,000</b>

**Question 2:**

Calcutta Suburban Co-operative Society is engaged in processing agricultural produce of its members without the aid of power, and its marketing, furnish the following particulars:

- (i) Income from processing of agricultural produce **Rs.17,000**
- (ii) Income from marketing agricultural produce **Rs.3,000**
- (iii) Dividends from another co-operative society **Rs.55,000**
- (iv) Income from letting of godowns **Rs.10,000**; and
- (v) Income from agency business **Rs.85,000**.

Determine its total income for the assessment year **2021-2022**.

**(HOME WORK)**

Answer:

**Calcutta Suburban Co-operative Society**  
**Assessment Year 2021-2022**  
**Computation of taxable income**

		<b>Rs.</b>
Income from letting of godowns		10,000
<b>Business income-</b>		
From processing of agricultural produce	17,000	
From marketing of agricultural produce	3,000	
From agency business	85,000	1,05,000
Dividend income		55,000
<b>Gross Total Income</b>		<b>1,70,000</b>
<b>Less: Deduction under section 80P</b>		
(a) Processing of agricultural produce	17,000	
(b) marketing of agricultural produce	3,000	
(c) Dividend from co-operative society	55,000	
(d) letting of godown (Assuming that godowns are let out for storage etc. Of commodities)	10,000	1,35,000
(e) General Deduction	50,000	
<b>Total Income</b>		<b>35,000</b>

**TAXATION OF MUTUALITY / MUTUAL CONCERNS**

**Examples of Mutual Concerns:** Resident Welfare Associations, Social Clubs, Sports Clubs, Bar Association, Shop Owners Association, FICCI, Bombay Chartered Accountants Society, PHD Chambers, etc.

1. The first principle of mutuality is that no person can trade with himself or make income out of himself. A mutual association arise when a group of persons associate together with a common object and contribute monies for achieving that object and divide the surplus amongst themselves. The objective should not be profit. The objective should be social security, entertainment, professional development, etc.
2. The principle of mutual association is that all the contributors to the common fund are entitled to participate in the surplus and all the participators to the surplus must be the contributors to the common fund.
3. It is not necessary for the mutual concern to distribute the surplus immediately. The participation in the surplus may be by way of reduction in future contributions or division of surplus on dissolution.
4. The fact that the mutual concern is incorporated as a company does not make any difference because incorporation does not destroy the identity of the contributors and participators.
5. The income of a mutual concern is exempt from tax as far as it is derived from activities of mutual nature, i.e., income received from members is exempt. The income from trading so far as it is confined to own members is also exempt. Where a mutual concern derives income from an activity with an outsider, then tax exemption will not apply to such income, i.e., income received from non-members is taxable.

6. Income of a mutual concern is taxable in the following circumstances:
- (a) Where the mutual concern is a trade, professional or similar association, then the income derived from specific services performed for its members is taxable as Profits & Gains of Business or Profession under section 28. However, if mutual concern is a resident welfare association, sports club, etc. then income derived from specific services performed for its members is not taxable.
  - (b) Income received from non-members.

### **Trade & Professional Association**

1. Trade and professional association means an association of traders or professionals for the protection or advancement of their common interest.
2. Any surplus arising to the trade or professional association from general activities i.e., entrance fees, etc. will not be taxable. Therefore, the concerned general expenditure shall also be not allowed as deduction from taxable income. Only the income arising from performing specific services to members is taxable and the expenditure to earn such income is deductible.
3. **Special Provision contained in Section 44A for Trade & Professional Association.**
  - (a) Applicable only to that trade, professional or similar association, the income of which is not distributed to its members.
  - (b) Amount Received by the association from its members by way of contribution or otherwise (other than amount received from performing specific services), i.e., **General receipts from members**  
  
**Less:** Expenditure incurred for the purposes of protection or advancement of interest of members (other than expenditure which is otherwise deductible under the Act and other than capital Expenditure), i.e., **General expenditure on member**  
  
**If negative - call it deficiency**  
**If positive - surplus exempt from tax**
    - (c) such deficiency will be allowed as a deduction in computing the income under the head P/G/B/P,
    - (d) If deficiency is greater than income under the head P/G/B/P, then the balance deficiency will be allowed as deduction in computing income under other heads of income.
    - (e) Before setting off the deficiency effect shall be first given to the deductions under this Act and brought forward losses and allowances.
    - (f) The total deficiency which can be set off shall not exceed 50% of the Total income computed before giving deduction of deficiency.

**KEYNOTE:**

The tax rate applicable to a mutual concern shall be the same as applicable to an individual except where the mutual concern is incorporated as a company.

**ILLUSTRATIONS**

1. The assessee is a club and has income from letting out its rooms to its members. The ITO want to tax the same Examine.

**Answer:**

The income of the club is exempt on grounds of mutuality (Cawnpore Club Ltd.).

2. A social club furnishes you the following data:

(a)	Receipts by way of entrance fees and annual membership fees from members	Rs.3,00,000
(b)	Expenditure on members	Rs. 50,000
(c)	Bank Interest	Rs. 1,00,000
(d)	Receipts from members for specific services.	Rs.3,00,000
(e)	Expenditure incurred on (d) above	Rs.2,50,000
Compute the income of the club.		

**Answer: SURPLUS/INCOME EXEMPT ON GROUND OF MUTUALITY**

1. Receipts from members by way of entrance fees and annual membership fees	3,00,000	
Less: Expenditure on members	50,000	2,50,000
Receipts from members for specific services (taxable only in case of trade, professional or similar associations)	3,00,000	
Less: Expenditure on above	2,50,000	50,000
<b>Exempt Income</b>		<b>3,00,000</b>
<b><u>TAXABLE INCOME</u></b>		
<b><u>INCOME FROM OTHER SOURCES</u></b>		
Bank Interest		1,00,000
<b>Total Income</b>		<b>1,00,000</b>

3. A trade Association furnishes you the following data:

(a)	General Receipts from members	Rs. 2,00,000
(b)	General Expenditure on members	Rs. 4,50,000
(c)	Receipts from specific services performed.	Rs. 3,00,000
(d)	Expenditure on specific services.	Rs. 1,60,000
(e)	Bank Interest	Rs. 3,00,000
(f)	B/f Depreciation	Rs. 60,000



**Answer: SURLUS / INCOME EXEMPT ON GROUND OF MUTUALITY**

General receipts from members	2,00,000
<b>Less:</b> General Expenditure on members	4,50,000
Deficiency to be dealt with as per section 44A	2,50,000

**TAXABLE INCOME ON TRADE ASSOCIATION**

<b>Profit and Gains of Business or Profession</b>		
Receipts from performing specific services	3,00,000	
<b>Less:</b> Expenditure on specific services	1,60,000	
	1,40,000	
<b>Less:</b> B/F Depreciation	60,000	
P/G/B/P before setting off deficiency	80,000	
<b>Less:</b> Deficiency as per section 44A	80,000*	Nil
<b><u>Income from other sources</u></b>		
Bank Interest	3,00,000	
<b>Less:</b> Deficiency as per section 44A	1,10,000*	<b>1,90,000</b>
		<b>1,90,000</b>

\* The maximum deficiency, which can be set off as per section 44A is 50% of (80,000 + 3,00,000) = Rs. 1,90,000

**Note:** The balance deficiency of Rs. 60,000 (= Rs. 2,50,000 – Rs. 1,90,000) shall have no tax treatment and shall not be carried forward.

**FROM THE JUDICIARY**

**1. BANKIPUR CLUB LTD. (SUPREME COURT)**

The question arose before the Supreme Court as to whether the club is entitled to exemption for the receipts or surplus arising from the sales of drinks, refreshments, etc., or amounts received by way of rent for letting out the buildings or amounts received by way of admission fees, periodical subscriptions and receipts of a similar nature from its members. The Tribunal as also the High Court had found that the amounts received by the club were for supply of drinks, refreshments or other goods as also the letting out of building for rent or by way of admission fees, periodical subscription, etc., from the members of the clubs were only for/towards charges for the privileges, conveniences and amenities provided to the members, which they were entitled to, as per the rules and regulations of the club. It had also been found that club realised various sums on the above counts only to afford to their members, the usual privileges, advantages, conveniences and accommodation. In other words, the services offered on the above counts were not done with any profit motive, and were not tainted with commerciality. The facilities were offered only as a matter of convenience for the use of the members (and their friends, if any, availing of the facilities occasionally).

The Supreme Court held that in the light of the findings of fact the receipts for the various facilities extended by the clubs to its members, as part of the usual privileges, advantages and conveniences, attached to the membership of the club, could not be

said to be "a trading activity." The surplus-excess of receipts over the expenditure - as a result of mutual arrangement, could not be said to be "income" for the purpose of the Act.

Where a number of persons combine together and contribute to a common fund for the financing of some venture or object and not with a view to earn profits and in this respect have no dealings or relations with any outside body, then any surplus returned to those persons cannot be regarded in any sense as profit. There must be complete identity between the contributors and the participators. If these requirements are fulfilled, it is immaterial what particular form the association takes. Trading between persons associating together in this way does not give rise to profit which are chargeable to tax.

If the object of the assessee-company claiming to be a "mutual concern" or "club", is to carry on a particular business and money is realised both from the members and from non-members, for the same consideration by giving the same or similar facilities to all alike the dealings as a whole, disclose profit-earning motive and are alike tainted with commerciality. In other words, the activity carried on by the assessee in such cases, claiming to be a "mutual concern" or "members' club" is a trade or an adventure in the nature of trade and the transactions entered into with the members or non-members alike is a trade/business/transaction and the resultant surplus is profit-income liable to tax.

## 2. **SIND CO-OPERATIVE HOUSING SOCIETY V. ITO (BOM.)**

**Can transfer fees received by a co-operative housing society from its incoming and outgoing members be exempt on the ground of principle of mutuality?**

High Court observed that under the bye-laws of the society, charging of transfer fees had no element of trading or commerciality. Both the incoming and outgoing members have to contribute to the common fund of the assessee. The amount paid was to be exclusively used for the benefit of the members as a class. The High Court, therefore, held that transfer fees received by a co-operative housing society, whether from outgoing or from incoming members, is not liable to tax on the ground of principle of mutuality since the predominant activity of such co-operative society is maintenance of property of the society and there is no taint of commerciality, trade or business.

## **TAXATION OF FILM PRODUCER & FILM DISTRIBUTOR**

<h3><b>DEDUCTION IN RESPECT OF EXPENDITURE ON PRODUCTION OF FEATURE FILMS IN CASE OF FILM PRODUCER</b></h3>
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1. **"Cost of production"**, in relation to a feature film, means the expenditure incurred on the production of the film, not being—
  - (a) the expenditure incurred for the preparation of the positive prints of the film; and
  - (b) the expenditure incurred in connection with the advertisement of the film after it is certified for release by the Board of Film Censors:

**Note: Expenditure referred in (a) and (b) above are allowable as revenue expenditure in the year of release of film.**

2. The cost of production of a feature film, shall be reduced by the subsidy received by the film producer, under any scheme framed by the Government.

**Deduction in respect of cost of production allowable under section 37 in the case of Abandoned Feature Films [Circular No. 16, dated 6.10.2015]**

The deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year is provided in Rule 9A.

In the case of abandoned films, however, since certificate of Board of Film Censors is not received, in some cases no deduction was allowed by applying Rule 9A of the Rules or by treating the expenditure as capital expenditure.

The CBDT has examined the matter in light of judicial decisions on this subject. The order of the Hon'ble Bombay High Court dated 28.1.2015 in ITA 310 of 2013 in the case of *Venus Records and Tapes Pvt. Ltd.* on this issue has been accepted and the aforesaid disputed issue has not been further contested.

Consequently, it is clarified that Rule 9A does not apply to abandoned feature films and that the expenditure incurred on such abandoned feature films is **not** to be treated as a capital expenditure. The cost of production of an abandoned feature film is to be treated as revenue expenditure and allowed as per the provisions of section 37 of the Income-tax Act, 1961.

**REFER COMPENDIUM FOR RULE 9A & RULE 9B**

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## **CHAPTER 11. FILING OF RETURN OF INCOME**

### **SECTION 139(1): OBLIGATION TO FILE RETURN OF INCOME**

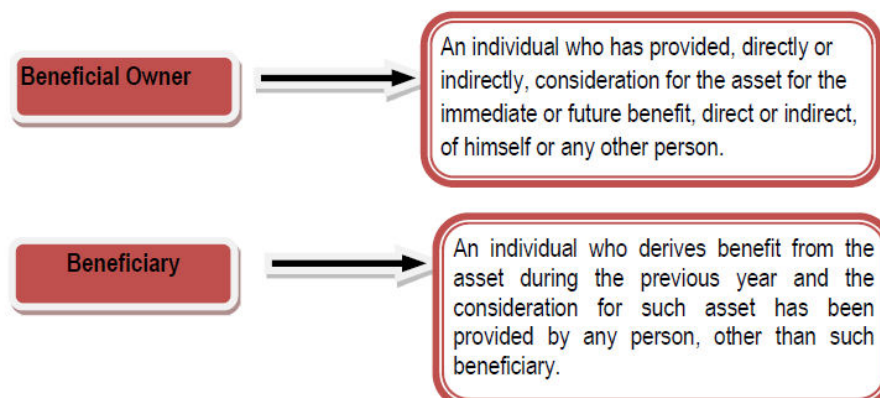
The Income-tax Act, 1961 contains provisions for filing of return of income. Return of income is the format in which the assessee furnishes information as to his total income and tax payable. The format for filing of returns by different assesseees is notified by the CBDT. The particulars of income earned under different heads, gross total income, deductions from gross total income, total income and tax payable by the assessee are generally required to be furnished in a return of income. In short, a return of income is the declaration of income by the assessee in the prescribed format.

### **COMPULSORY FILING OF RETURN OF INCOME [SECTION 139(1)]**

- (1) As per section 139(1), it is compulsory for companies and firms to file a return of income or loss for every previous year on or before the due date in the prescribed form.
- (2) In case of a person other than a company or a firm, filing of return of income on or before the due date is mandatory, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeds the basic exemption limit.
- (3) A return of income or loss for the previous year in the prescribed form and verified in the prescribed manner on or before the due date, has to be filed by every person, being a resident other than not ordinarily resident in India within the meaning of section 6(6), who is not required to furnish a return under section 139(1) if such person, at any time during the previous year –
  - (a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has a signing authority in any account located outside India; or
  - (b) is a beneficiary of any asset (including any financial interest in any entity) located outside India.

However, an individual being a beneficiary of any asset (including any financial interest in any entity) located outside India would not be required to file return of income, where, income, if any, arising from such asset is includible in the income of the person referred to in (a) above in accordance with the provisions of the Income-tax Act, 1961.

**Meaning of “beneficial owner” and “beneficiary” in respect of an asset for the purpose of section 139:**



**Illustration on 4<sup>th</sup> & 5<sup>th</sup> Proviso to section 139(1):**

**Illustration 1 :-**

Suppose Mr. A is R & OR in India has black money of Rs. 10 Cr, transfers to Mr. B in Dubai through Hawala transaction. Mr. B creates a trust in Dubai whose beneficiary is Mr. A. Mr. B transfers to trust Rs. 10 Cr in the form of donation and trust buys the bonds of Rs. 10 cr. Mr. A is the sole beneficiary of this trust & he does not have any taxable income in India.

Prior to F.A. 2015, Mr. A was not filing the return,  $\therefore$  he does not hold any asset outside India **in his name**.

Explanation 5 to Sec 139(1) inserted by FA 2015 provides that beneficiary of an asset means an individual who derives benefits from such asset during P.Y. and consideration is provided by any other person.

$\therefore$  Now, Mr. A who is beneficiary of asset has to file IT Returns and has to declare assets for which he is beneficiary.

**Illustration 2 :-**

Mr. A gifts his agricultural land to mother of Mr. B who lives in Mumbai worth Rs. 20 cr. Mr. B is a permanent resident in Dubai and N.R. In India.

Mr. B buys house of Rs. 20 cr in Dubai in his name. Mr. B gives a power of attorney to Mr. A to lease such house. Also, a deal is entered between the two to transfer the house after 10 years to Mr. A or to his wife.

Prior to FA 2015, Mr. A was not filing ROI as he does not own any assets outside India in his name.

F.A. 2015 has inserted “Beneficial owner” in respect of an asset means “an individual who has provided, directly / indirectly, consideration for the asset for the immediate / future benefit direct / indirect of himself or any other person.” [Explanation 4 to Sec 139(1)].

Although the home in Dubai is not in the name of Mr. A still he is a beneficial owner,  $\therefore$  he has provided consideration indirectly, for the house which is for immediate or future benefit, direct or indirect of Mr. A or his wife. He has to file ROI.

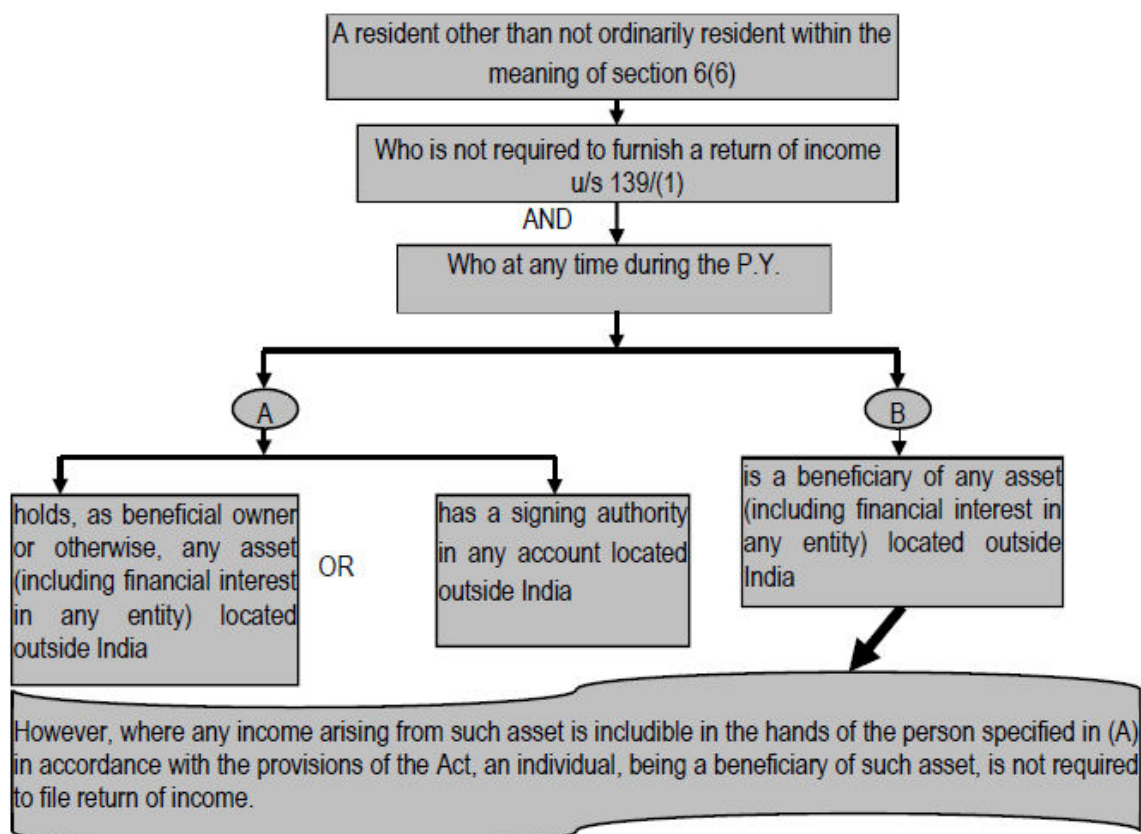
### **Illustration 3 :-**

Mr. A has income greater than taxable limit whereas Mrs. A does not have taxable income. Mr. A opens an A/c in Dubai in the name of Mrs. A and transfers Rs. 1 crore out of his taxable income to his wife account. Mrs. A purchases house in Singapore out of bank balance in her name.

Mr. A is the beneficial owner whereas Mrs. A is a beneficiary.

As per the 5<sup>th</sup> proviso to section 139(1) introduced by F.A. 2015 Mrs. A will not be under an obligation to file ROI if income from house property in Dubai is clubbed with income of Mr. A.

### **Requirement of filing of return of income as per the fourth and fifth proviso to section 139(1)**



- (4) All such persons mentioned in (1), (2) & (3) above should, on or before the due date, furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

**(5) SIXTH PROVISO TO SEC 139(1):**

Further, every person, being an individual or a HUF or an AOP or BOI or an artificial juridical person -

- whose total income or the total income of any other person in respect of which he is assessable under this Act during the previous year
- without giving effect to the provisions of Chapter VI-A **or exemptions u/s 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB (FA 2019)**
- exceeded the basic exemption limit.

is required to file a return of his income or income of such other person on or before the due date in the prescribed form and manner and setting forth the prescribed particulars.

For the **A.Y.2021-2022**, the basic exemption limit is **Rs. 2,50,000** for individuals/HUFs/AOPs/BOIs and artificial juridical persons, **Rs. 3,00,000** for resident individuals of the age of 60 years but less than 80 years and **Rs. 5,00,000** for resident individuals of the age of 80 years or more at any time during the previous year. These amounts denote the level of total income, which is arrived at after claiming the admissible deductions under Chapter VI-A. However, the level of total income to be considered for the purpose of filing return of income is the income before claiming the admissible deductions under Chapter VI-A.

**AMENDMENT MADE BY FINANCE ACT (NO.2 ) 2019**

**Mandatory furnishing of return of income by certain persons**

Currently, a person other than a company or a firm is required to furnish the return of income only if his total income exceeds the maximum amount not chargeable to tax, subject to certain exceptions. Therefore, a person entering into certain high value transactions is not necessarily required to furnish his return of income. In order to ensure that persons who enter into certain high value transactions do furnish their return of income, it is proposed to amend section 139 of the Act so as to provide that a person shall be mandatorily required to file his return of income, if during the previous year, he-

- (i) has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current account maintained with a banking company or a co-operative bank; or
- (ii) has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or
- (iii) has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or
- (iv) fulfils such other prescribed conditions, as may be prescribed.

Further, currently, a person claiming rollover benefit of exemption from capital gains tax on investment in specified assets like house, bonds etc., is not required to furnish a return of income, if after claim of such rollover benefits, his total income is not more than the maximum amount not chargeable to tax . In order to make furnishing of return

compulsory for such persons, it is proposed to amend the sixth proviso to section 139 of the Act to provide that a person who is claiming such rollover benefits on investment in a house or a bond or other assets, under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB of the Act, shall necessarily be required to furnish a return, if before claim of the rollover benefits, his total income is more than the maximum amount not chargeable to tax.

These amendments will take effect from 1st April, 2020 and will, accordingly apply in relation to assessment year 2020-2021 and subsequent assessment years.

**(6) Meaning of due date :** ‘Due date’ means -

	Assessee	Due Date
(i)	Where the assessee, other than an assessee referred to in clause (ii), is - (a) a company, (b) a person (other than a company) whose accounts are required to be audited under the Income-tax Act, 1961 or any other law in force; or (c) a <del>working</del> partner of a firm whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force.	<del>30th September of</del> <b>assessment year</b>
(ii)	in the case of an assessee who is required to furnish a report referred to in section 92E.	30 <sup>th</sup> November of the assessment year
(iii)	in the case of any other assessee.	31st July of the assessment year

***AMENDMENT MADE BY FINANCE ACT 2020***

*The due date for filing return of income under sub-section (1) of section 139 is proposed to be amended by:-*

- (A)** *providing 31st October of the assessment year (as against 30th September) as the due date for an assessee referred to in clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act;*
- (B)** *removing the distinction between a working and a non-working partner of a firm with respect to the due date as mentioned in sub-clause (iii) of clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act.*

*These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.*



**ELECTRONIC FILING OF RETURN:**

It is mandatory for the following assesseees to file the return electronically. (Electronic Returns are paperless returns):

- (i) All **Companies** (With Digital Signatures)
- (ii) **Partnership Firms, Individual and HUFs** subject to tax audit under section 44AB (With Digital Signatures)
- (iii) An individual or HUF whose total income exceeds **Rs 5 lakhs** (Digital Signatures are optional)

**CONDITIONS FOR CLAIMING PROFIT LINKED DEDUCTIONS :**

**Section 80AC** provides that in computing the total income of an assessee of the previous year relevant to any assessment year, if any deduction is admissible under section 80-IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, 80-IC, 80-ID, 80-IE, **80JJA, 80JJAA, 80LA, 80P, 80PA, 80QQB and 80RRB**, no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under section 139(1).

**SECTION 139(3) READ WITH SECTION 80: LOSS RETURN**

**Section 139(3):** If a person has sustained a loss under the head "Profits and gains of business or profession" or under the head "Capital Gains" and claims that such loss should be carried forward under section 72 or section 73 or **SECTION 73A** or section 74 or section 74A, then he may furnish a return of loss within the time prescribed under section 139(1) and all provisions of the Income-tax Act shall apply as if it were a return furnished under section 139(1).

**Section 80:** Notwithstanding anything contained in Chapter VI, the loss which has not been determined in pursuance of a return filed in accordance with the provisions of section 139(3), shall not be allowed to be *carried forward and set-off* under section 72 or section 73 or **SECTION 73A** or section 74 or section 74A.

**ANALYSIS**

- (1) This section requires the assessee to file a return of loss in the same manner as in the case of return of income within the time allowed under section 139(1).
- (2) Section 80 requires mandatory filing of return of loss under section 139(3) on or before the due date specified under section 139(1) for carry forward of the following losses
  - (a) Business loss under section 72(1)
  - (b) Speculation business loss under section 73(2)
  - (c) Loss from specified business under section 73A(2)
  - (d) Loss under the head "Capital Gains" under section 74(1)
  - (e) Loss from the activity of owning and maintaining race horses under section 74A(3)
- (3) Consequently, section 139(3) requires filing of return of loss mandatorily within the time allowed under section 139(1) for claiming carry forward of the losses mentioned in (2) above.

- (4) However, loss under the head “Income from house property” under section 71B and unabsorbed depreciation under section 32 can be carried forward for set-off even though return of loss has not been filed before the due date.
- (5) A return of loss has to be filed by the assessee in his own interest and the non-receipt of a notice from the Assessing Officer requiring him to file the return cannot be a valid excuse under any circumstances for the non-filing of such return.
- (6) Unabsorbed depreciation can be carried forward even if no return has been filed by the assessee.

**Can unabsorbed depreciation be allowed to be carried forward in case the return of income is not filed within the due date?**

**CIT v. Govind Nagar Sugar Ltd. (2011) (Delhi)**

**High Court’s Observations:** On this issue, the Delhi High Court observed that, the provisions of section 80 and section 139(3), requiring the return of income claiming loss to be filed within the due date, applies to, *inter alia*, carry forward of business loss and not for the carrying forward of unabsorbed depreciation. As per the provisions of section 32(2), the unabsorbed depreciation becomes part of next year’s depreciation allowance and is allowed to be set-off as per the provisions of the Income-tax Act, 1961, irrespective of whether the return of earlier year was filed within due date or not.

**High Court’s Decision:** Therefore, in the present case, the High Court held that the unabsorbed depreciation will be allowed to be carried forward to subsequent year even though the return of income of the current assessment year was not filed within the due date.

**CONDONATION OF DELAY IN FILING REFUND CLAIM AND CLAIM OF  
CARRY FORWARD LOSSES  
CIRCULAR 9/2015, DATED 9-6-2015**

1. This Circular deals with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof.
  - (a) The Commissioners of Income-tax shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs.10 lakhs for any one assessment year.
  - (b) The Chief Commissioners of Income-tax shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.10 lakhs but is not more than Rs. 50 lakhs for any one assessment year.
  - (c) The applications/claims for amount exceeding Rs.50 lakhs shall be considered by the Board.

2. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.
3. On 1-1-2021, assessee can make application to Commissioner of Income-tax/ Chief Commissioner of Income-tax / Board for Assessment Year 2014-2015 and future assessment years if he has not filed the returns for these assessment years and there is a claim of refund in such returns or there is a claim of carry forward of losses in such returns. He cannot file any application for Assessment Year 2013-2014 or earlier Assessment Years on 1-1-2021 as period of 6 years from end of relevant Assessment Year has elapsed.
4. The powers of acceptance/rejection of the application will be subject to following conditions:
  - i. At the time of considering the case, it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.
  - ii. The Commissioner of Income-tax/ Chief Commissioner of Income-tax dealing with the case shall be empowered to direct the jurisdictional Assessing Officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.
  - iii. No interest shall be granted on the belated refunds.

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#### SECTION 139(4): BELATED RETURN

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If a person has not furnished the return of income within the time allowed under section 139(1) then he may furnish the return of income at **any time before the end of the relevant Assessment Year** or before the completion of assessment, whichever is earlier.

#### **KEY NOTES:**

1. "Assessment" referred to in section 139(4) means the assessment under section 144.
2. "Completion of assessment" means the date of passing/ signing the assessment order and not the date of service of assessment order.

**Issue No.1:** (a) For Assessment Year 2021-2022, no return of income has been filed and no assessment has been made under section 144. Upto what time can the assessee file return of income?

**Answer:**

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(b) For Assessment Year 2021-2022, no return of income has been filed. The Assessing Officer makes a best judgement assessment under section 144 on

**31.01.2022.** Upto what time the assessee could have filed the return of income?

**Answer:**

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**Issue No.2:** For Assessment Year **2021-2022**, no return of income has been filed. The Assessing Officer passes an assessment order under section 144 on **31.12.2021**. The said order is issued on **2.1.2022** and is received by the assessee on **5.1.2022**. The assessee has filed a return of income for Assessment Year **2021-2022** on **1.1.2022**. Comment.

**Answer:**

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### SECTION 139(5): REVISED RETURN

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If any person having furnished a return under section 139(1) or under section 139(4), discovers any omission or wrong statement therein, then he may furnish a revised return at any time **before the expiry of the relevant Assessment Year** or before the completion of assessment, whichever is earlier.

**Issue No.1:** **Dhampur Sugar Mills Limited**

**The revised return substitutes the original return from the date the original return was filed.** Once a revised return is filed, the original return is deemed to have been withdrawn and the revised return is deemed to have been filed on the date the original return was filed. The revised return steps into the shoes of the original return.

**Issue No. 2:** **How many times can a return be revised?**

As per decision in **Dr. N. Srivastava**, an assessee can revise a return **any number of times** provided that the revised return is filed within the time prescribed under section 139(5).

**Issue No. 3:** If income is increased in a revised return furnished after the **receipt** of the notice under section 143(2) but before the completion of assessment, then the revised return is a valid return provided it is furnished before the end of the relevant Assessment Year. **However, penalty for concealment of income shall be levied on the additional income declared in the revised return.**

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### SECTION 139(9): DEFECTIVE RETURN (REDUNDANT NOW)

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- (1) Under this sub-section, the Assessing Officer has the power to call upon the assessee to rectify a defective return.
- (2) Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation. The Assessing Officer has the discretion to extend the time period beyond 15 days, on an application made by the assessee.

- (3) If the defect is not rectified within the period of 15 days or such further extended period, then the return would be treated as an invalid return. The consequential effect would be the same as if the assessee had failed to furnish the return.
- (4) Where, however, the assessee rectifies the defect after the expiry of the period of 15 days or the further extended period, but before assessment is made, the Assessing Officer can condone the delay and treat the return as a valid return.
- (5) A return of income shall be regarded as defective unless all the following conditions are fulfilled, namely:
- (i) The annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computations of gross total income and total income have been duly filled in.
  - (ii) The return of income is accompanied by the following, namely:
    - (a) a statement showing the computation of the tax payable on the basis of the return.
    - (b) the report of the audit obtained under section 44AB (If such report has been furnished prior to furnishing the return of income, a copy of such report and the proof of furnishing the report should be attached).
    - (c) the proof regarding the tax, if any, claimed to have been deducted or collected at source and the advance tax and tax on self-assessment, if any, claimed to have been paid. (However, the return will not be regarded as defective if (a) a certificate for tax deducted or collected was not furnished under section 203 or section 206C to the person furnishing his return of income, (b) such certificate is produced within a period of 2 years).
    - (d) the proof of the amount of compulsory deposit, if any, claimed to have been paid under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974;
  - (iii) Where regular books of account are maintained by an assessee, the return of income is accompanied by the following -
    - (a) copies of manufacturing account, trading account, profit and loss account or income and expenditure account, or any other similar account and balance sheet;
    - (b) the personal accounts as detailed below -

(1)	Proprietary business or profession	The personal account of the proprietor
(2)	Firm, association of persons or body of individuals	personal accounts of partners or members
(3)	Partner or member of a firm, association of persons or body of individuals	partner's personal account in firm, member's personal account in the association of persons or body of

		individuals
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- (iv) Where the cost accounts of an assessee have been audited under section 233B of Companies Act, 1956, the return should be accompanied by such report.
- (v) Where regular books of account are not maintained by the assessee, the return should be accompanied by -
  - (a) a statement indicating the amount of turnover or gross receipts, gross profit, expenses and net profit of the business or profession;
  - (b) the basis on which such amounts mentioned in (1) above have been computed,
  - (c) the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.

*It may be noted that a return which is otherwise valid would not be treated as defective merely because self-assessment tax and interest payable in accordance with the provisions of section 140A has not been paid on or before the date of furnishing the return.*

**Notes:**

- (i) Many of these particulars are now required to be incorporated as part of the relevant return form, for example, details of tax deducted at source, advance tax paid, self-assessment tax paid, amount of turnover/gross receipts etc.
- (ii) Section 292B provides that no return of income, order of assessment, notice, summons or other proceedings furnished or made or taken or purported to have been furnished or made in pursuance of any of the provisions of the Income-tax Act, 1961 shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding, if they are in substance and effect in conformity with or according to the intent and purposes of the Income-tax Act, 1961. The provision, thus, enables tax authorities to accept returns and other documents and tax payers to accept orders, notice, etc., received from tax authorities even in cases where there are a few typographical, arithmetical or other mistakes which do not materially affect the objects with which the document was submitted by the assessee or order was issued by the department.

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**SECTION 139B: SCHEME FOR SUBMISSION OF RETURNS THROUGH TAX RETURN PREPARERS (TRPs)**

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**(Not in Summary, do from here)**

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- (1) This section provides that, for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income, the CBDT may notify a Scheme to provide that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the Scheme.
- (2) The Tax Return Preparer shall assist the persons furnishing the return in a manner that will be specified in the Scheme, and shall also affix his signature on such return.

- (3) A Tax Return Preparer can be **an individual**, other than
- (i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.
  - (ii) any legal practitioner who is entitled to practice in any civil court in India.
  - (iii) a chartered accountant.
  - (iv) an employee of the 'specified class or classes of persons'.
- (4) The **"specified class or classes of persons"** for this purpose means any person other than a company or a person whose accounts are required to be audited under section 44AB (tax audit) or under any other existing law, who is required to furnish a return of income under the Act.
- (5) The Scheme notified under the said section may provide for the following -
- (i) the manner in which and the period for which the Tax Return Preparers shall be authorised,
  - (ii) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer,
  - (iii) the code of conduct for the Tax Return Preparers,
  - (iv) the duties and obligations of the Tax Return Preparers,
  - (v) the circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn, and
  - (vi) any other relevant matter as may be specified by the Scheme.
- (6) Accordingly, the CBDT has, in exercise of the powers conferred by this section, framed the Tax Return Preparer Scheme, 2006, which came into force from 1.12.2006.

Particulars	Contents
Applicability of the scheme	The scheme is applicable to all eligible persons.
Eligible person	Any person being an individual or a Hindu undivided family.
Tax Return Preparer	Any individual who has been issued a "Tax Return Preparer Certificate" and a "unique identification number" under this Scheme by the Partner Organisation to carry on the profession of preparing the returns of income in accordance with the Scheme. However, the following person are not entitled to act as Tax Return Preparer: <ul style="list-style-type: none"> <li>(i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.</li> <li>(ii) any legal practitioner who is entitled to practice in any civil court in India.</li> </ul>

	(iii) an accountant.
Educational qualification for Tax Return Preparers	An individual, who holds a bachelor degree from a recognised Indian University or institution, or has passed the intermediate level examination conducted by the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India or the Institute of Cost Accountants of India, shall be eligible to act as Tax Return Preparer.
Preparation of and furnishing the Return of Income by the Tax Return Preparer	<p>An eligible person may, at his option, furnish his return of income under section 139 for any assessment year after getting it prepared through a Tax Return Preparer: However, the following eligible person (an individual or a HUF) cannot furnish a return of income for an assessment year through a Tax Return Preparer:</p> <p>(i) who is carrying out business or profession during the previous year and accounts of the business or profession for that previous year are required to be audited under section 44AB or under any other law for the time being in force; or</p> <p>(ii) who is not a resident in India during the previous year.</p> <p>An eligible person cannot furnish a revised return of income for any assessment year through a Tax Return Preparer unless he has furnished the original return of income for that assessment year through such or any other Tax Return Preparer.</p>

**Note** - It may be noted that as per section 139B(3), an employee of the “specified class or classes of persons” is not authorized to act as a Tax Return Preparer. Therefore, it follows that employees of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force (since they are not falling in the category of specified class or classes of persons), are eligible to act as Tax Return Preparers.

**POWER OF CBDT TO DISPENSE WITH FURNISHING DOCUMENTS ETC. WITH THE RETURN AND FILING OF RETURN IN ELECTRONIC FORM [SECTIONS 139C & 139D]**

- (1) Section 139C provides that the CBDT may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificate, reports of audit or any other documents, which are otherwise required to be furnished along with the return under any other provisions of this Act.
- (2) However, on demand, the said documents, statements, receipts, certificate, reports of audit or any other documents have to be produced before the Assessing Officer.



- (3) Section 139D empowers the CBDT to make rules providing for –
- (a) the class or classes of persons who shall be required to furnish the return of income in electronic form;
  - (b) the form and the manner in which the return of income in electronic form may be furnished;
  - (c) the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return of income in electronic form but have to be produced before the Assessing Officer on demand;
  - (d) the computer resource or the electronic record to which the return of income in electronic form may be transmitted.

### ANALYSIS

It is mandatory for the companies and Individuals, HUFs and Partnership firms subject to tax audit under section 44AB to file return of income electronically i.e., E-return. E-return is a PAPERLESS RETURN and it is not accompanied by TDS certificates, balance sheet, profit & loss account, tax audit report and other documents referred to in section 139(9). Therefore, the assessee filing E-return is exempted from the filing of documents referred to in section 139(9) and other provisions of the Income-tax Act. Even the assessee filing paper return are exempted from the condition of filing the documents etc. referred to in section 139(9) and other provisions of Income tax Act. All returns whether electronic returns or physical returns are paperless returns.

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### SECTION 140: WHO SHALL VERIFY THE RETURN

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(Not in Summary, do from here)

This section specifies the persons who are authorized to verify the return of income under section 139 of the Act.

	Assessee	Circumstance	Authorised Persons
1.	Individual	(i) In circumstances not covered under (ii), (iii) & (iv) below	- the individual himself
		(ii) where he is absent from India	- the individual himself; or - any person duly authorised by him in this behalf holding a valid power of attorney from the individual (Such power of attorney should be attached to the return of income)
		(iii) Where he is mentally incapacitated from attending to his affairs	- his guardian; or - any other person competent to act on his behalf

		(iv) where, for any other reason, it is not possible for the individual to verify the return	- any person duly authorised by him in this behalf holding a valid power of attorney from the individual (Such power of attorney should be attached to the return of income)
2.	Hindu Undivided Family	(i) in circumstances not covered under (ii) and (iii) below	- the karta
		(ii) where the karta is absent from India	- any other adult member of the HUF
		(iii) where the karta is mentally incapacitated from attending to his affairs	- any other adult member of the HUF
3.	Company	(i) in circumstances not covered under (ii) to (v) below	- the managing director of the company
		(ii) (a) where for any unavoidable reason such managing director is not able to verify the return; or (b) where there is no managing director	- any director of the company/ <b>any other person as may be prescribed for this purpose. (Amended by Finance Act 2020)</b>
		(iii) Where the company is not resident in India	- a person who holds a valid power of attorney from such company to do so (such power of attorney should be attached to the return).
		(iv) (a) Where the company is being wound up (whether under the orders of a court or otherwise); or (b) where any person has been appointed as the receiver of any assets of the company	- Liquidator  - Liquidator

		(v) Where the management of the company has been taken over by the Central Government or any State Government under any law	- the principal officer of the company
		(vi) <i>Where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.</i>	- <i>insolvency professional appointed by such Adjudicating Authority</i>
4.	Firm	(i) in circumstances not covered under (ii) below	- the managing partner of the firm
		(ii) (a) where for any unavoidable reason such managing partner is not able to verify the return; or (b) where there is no managing partner.	- any partner of the firm, not being a minor - any partner of the firm, not being a minor
5.	LLP	(i) in circumstances not covered under (ii) below	- Designated partner
		(ii) (a) where for any unavoidable reason such designated partner is not able to verify the return; or (b) where there is no designated partner.	- any partner of the LLP/ <b>any other person as may be prescribed for this purpose. (Amended by Finance Act 2020)</b>
6.	Local authority	-	- the principal officer
7.	Political party [referred to in section 139(4B)]	-	- the chief executive officer of such party (whether he is known as secretary or by any other designation)
8.	Any other association	-	- any member of the association or the principal officer of such association

<b>9.</b>	Any other person	-	- that person or some other person competent to act on his behalf.
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**RETURN OF INCOME IS FILED UNDER THE FOLLOWING SECTIONS**

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<b>(i)</b>	Section 139(1)
<b>(ii)</b>	Section 139(3)
<b>(iii)</b>	Section 139(4)
<b>(iv)</b>	Section 139(4A)
<b>(v)</b>	Section 139(4B)
<b>(vi)</b>	Section 139(4C)
<b>(vii)</b>	Section 139(4D)
<b>(viii)</b>	Section 139(4E)/(4F)
<b>(ix)</b>	Section 139(5)
<b>(x)</b>	Section 142(1)(i)
<b>(xi)</b>	Section 148
<b>(xii)</b>	Section 153A

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## **CHAPTER 12. ASSESSMENT PROCEDURES**

### **NOTICE UNDER SECTION 142(1)**

**Section 142(1)(i):** If the assessee has not furnished the return of income within the time specified under section 139(1) then the Assessing Officer may issue a notice requiring him to furnish the return of income within the time specified in the notice.

**KEY NOTES:**

1. If the due date under section 139(1) has expired and the assessee has not furnished the return of income and the Assessing Officer wants to make a best judgement assessment under section 144, then it is not mandatory for the Assessing Officer to issue notice under section 142(1)(i). **(See later with section 144)**
2. A return under section 142(1) cannot be filed belatedly under section 139(4). Further it cannot be revised under section 139(5).

**Section 142(1)(ii):** For the purpose of making an assessment, by issuing this notice the Assessing Officer can require the assessee to furnish accounts, documents, various other information and also a statement of assets and liabilities, whether included in the accounts or not.

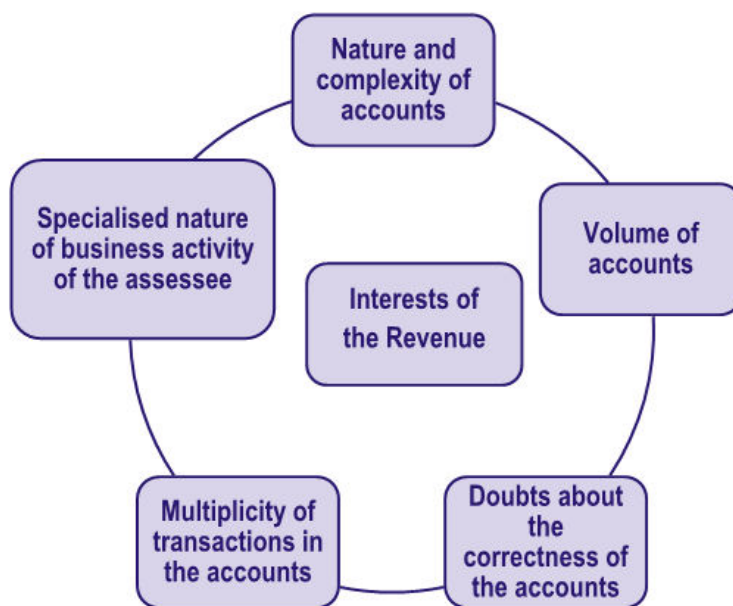
**KEY NOTES:**

1. The Assessing Officer shall obtain the previous approval of the Joint Commissioner before requiring the assessee to furnish a statement of assets and liabilities not included in the accounts.
2. The Assessing Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.
3. Notice under section 142(1)(ii) can be issued whether the assessee has filed return of income or not.
4. By issuing a notice under section 142(1)(ii) alone, the Assessing Officer cannot make an assessment.

### **SECTIONS 142(2A) TO 142(2D): SPECIAL AUDIT**

- (1) **Basis for direction to get accounts audited:** If at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

The expression 'accountant' for this purpose means a 'chartered accountant' within the meaning of the Chartered Accountants Act, 1949.



- (2) **Special Audit to be conducted by the accountant nominated by the Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner** - The accountant by whom the audit should be carried out would be nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income- tax specifically for the purpose and the auditor is required to furnish the report of his audit in the prescribed form duly signed and verified by him and setting forth such other particulars as may be prescribed and also giving details in regard to such additional particulars as the Assessing Officer may require in respect of each individual case. The report of the auditor should be furnished in Form No.6B prescribed under Rule 14A of the Income-tax Rules, 1962. The accountant appointed for carrying out the audit becomes liable to carry out the requirements of audit as directed by Assessing Officer and it is the Principal Commissioner or Commissioner and not the assessee who would be his client for this purpose.
- (3) **Opportunity of being heard to be given before issuing directions for special audit** - The Supreme Court in *Rajesh Kumar & Ors. v. DCIT (2006) 287 ITR 91* observed that the order under section 142(2A) is a quasi judicial order. Therefore, the principles of natural justice have to be applied and the assessee has to be given an opportunity of being heard before directing the special audit. The principles of natural justice are based on two principles, namely, (i) nobody shall be condemned unheard; (ii) nobody shall be a judge of his own cause. Once it is held that the assessee suffers civil consequences and any order passed would be prejudicial to him, the principles of natural justice must be held to be implicit. If the principles of natural justice were to be excluded, the Parliament could have said so expressly.

Accordingly, to give effect to the observation of the Supreme Court, it has been provided that the Assessing Officer is required to give the assessee an opportunity of being heard before issuing directions for special audit under section 142(2A).

- (4) **Special audit may be directed even if accounts are audited under any other law** - The Assessing Officer is empowered to direct the audit to be carried out in the case of any particular assessee even if the accounts of the assessee have already been audited under any other law for the time being in force or otherwise.
- (5) **Time limit** - The report of the auditor after conducting the audit must be furnished to Assessing Officer by the assessee within the period specified by the Assessing Officer in his order. The Assessing Officer is, however, entitled, *suo motu* on receipt of an application made in this behalf by the assessee for any good any sufficient reason to extend the time-limit by such further period or periods as he deems fit. Further, the aggregate of the period originally fixed and the period or periods so extended **should not exceed 180 days** in any case. This time of 180 days must be reckoned from the date on which the Assessing Officer's direction to get the accounts audited is received by the assessee.
- (6) **Expenses of special audit to be paid by the Central Government** - Where the direction for special audit is issued by the Assessing Officer, the expenses of, and incidental to, such special audit, including remuneration of the Accountant, shall be determined by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the prescribed guidelines. The expenses so determined shall be paid by the Central Government.
- Rule 14B lays down the guidelines for the purposes of determining expenses for audit under section 142(2A). The said Rule is applicable when the audit under section 142(2A) is directed by an Assessing Officer on or after 1st June, 2007. The expenses of, and incidental to, audit (including the remuneration of the accountant, qualified assistants, semi-qualified and other assistants who may be engaged by such Accountant) should not be less than **Rs. 3,750** and not more than **Rs. 7,500** for every hour of the period as specified by the Assessing Officer under section 142(2C). Such period shall be specified in terms of the number of hours required for completing the report.
- (7) **Assessee to be given an opportunity of being heard** - The assessee should, however, be given an opportunity of being heard in respect of any material gathered on the basis of –
- (i) any inquiry under section 142(2); or
  - (ii) any audit under section 142(2A)

which is proposed to be utilized for the purposes of the assessment. If, however, the assessment is in nature of a best judgment assessment under section 144, it is not obligatory for the Assessing Officer to give the assessee an opportunity to be heard, before passing the assessment order on the basis of the report of the auditor.

**Illustration:**

For Assessment Year 2021-2022, the assessee filed a return of income under section 139(1) and his case was picked up for scrutiny under section 143(3). He was accordingly issued a notice under section 143(2). During the assessment proceedings, the Assessing Officer directed the assessee to get his accounts audited under section 142(2A). The report of the special audit is received by the Assessing Officer within the prescribed time. The Assessing Officer requires further information from the assessee through a notice under section 143(2). The assessee is not able to furnish the information as required by the notice within the time given in the notice.

The Assessing Officer issues a show cause notice to the assessee under section 144 to show cause as to why a best judgment assessment should not be made on him for non-compliance with the notice under section 143(2).

**CASE-I:** Assessee replies to the show cause notice under section 144 and the Assessing Officer considers that the reply is satisfactory.

**CASE-II:** Assessee does not reply to the show cause notice or the reply given to the show cause notice by the assessee is not considered satisfactory by the Assessing Officer.

**COMMENT.****Answer:**

**CASE I:** Since the reply to the show cause notice under section 144 is satisfactory, the Assessing Officer shall drop the proceedings under section 144 and will complete the assessment under section 143(3). If the Assessing Officer wants to use any material gathered from the report of Chartered Accountant under section 142(2A), then the assessee shall be given an opportunity of being heard as to show cause why the material in the audit report should not be used against him.

**CASE II:** Since the reply to show cause notice under section 144 is not given or is not satisfactory, the Assessing Officer shall proceed to make a best judgment assessment under section 144. The Assessing Officer may utilise for the purposes of assessment under section 144, any material gathered on the basis of audit under section 142(2A). in this case the assessee shall not be given an opportunity of being heard as to show cause why the material in the audit report should not be used against him.

**(8) Consequence of failure to get special audit done -** In any case, where the assessee is directed to get audit done and the assessee fails to do so, the Assessing Officer is entitled to make a best judgment assessment under section 144 in addition to imposing penalty or taking such steps as may be necessary under the law.

In a case where a Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner issued instructions under section 142(2A)



nominating a Chartered Accountant for auditing the assessee's accounts and though the concerned assessee was willing to produce the records, the concerned Chartered Accountant refused to audit the accounts, a question arose as to whether there was a failure on the assessee's part to comply with the directions under section 142(2A) and consequently the best judgement assessment could be made under section 144(b).

The Supreme Court held that if for a frivolous reason the Chartered Accountant declined to undertake the audit of the assessee's accounts, the assessee could not be held responsible. In such a case, there was no default or failure to comply with the direction issued under section 142(2A) on the assessee's part so as to attract the provisions of section 144(b). The best judgement made by the Assessing Officer was set aside with the directions to appoint another Chartered Accountant within one month to get the accounts audited [*Swadeshi Polytex Ltd. v. ITO [1983] 144 ITR 171 (SC)*].

- (9) If Assessing Officer issues direction under section 142(2A) without giving a show cause notice to the assessee, then assessee can file a WRIT PETITION in High Court against such direction and High Court shall quash such direction issued under section 142(2A).

#### **FOR YOUR KNOWLEDGE:**

No appeal can be filed against direction issued under section 142(2A) or any notice issued by Assessing Officer under the Income tax Act. The assessee has a constitutional remedy in case he wants to challenge the direction under section 142(2A) or any other notice of Assessing Officer. The assessee can file a WRIT PETITION in the High Court challenging the validity of the direction under section 142(2A) or any other notice issued by Assessing Officer. Thereafter the assessee can file a Special Leave Petition (SLP) to the Supreme Court.

**WRIT PETITION & SLP can be filed only if there is no remedy in law.**

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#### **CONSEQUENCES OF NON-COMPLIANCE WITH A NOTICE ISSUED UNDER SECTION 142(1) (i) OR UNDER SECTION 142(1)(ii) OR 143(2) OR A DIRECTION UNDER SECTION 142 (2A)**

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1. It may result in a best judgement assessment under section 144 and/ or
2. **Penalty under section 272A** - Penalty of **Rs. 10,000** for each such failure and/ or
3. **Prosecution under section 276D** - Imprisonment with or without fine.

#### **KEY NOTE:**

Before making a best judgement assessment and before levying penalty/ launching prosecution, the assessee shall be given an opportunity of being heard. If the assessee proves that there was a reasonable cause for the failure, for e.g. negligence of the CA in submitting the report under section 142(2A), death in the family, some major illness, etc., the Assessing Officer shall not make the best judgement assessment. The penalty and prosecution proceedings shall be dropped. (Where a notice under section 142(1)(i) has been issued to the assessee and he has not complied with it, then opportunity of being heard shall NOT be given before making best judgement assessment).

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### **SECTION 142A: ESTIMATION OF VALUE OF ASSETS BY VALUATION OFFICER**

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- (1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.
- (2) The Assessing Officer may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.
- (3) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.
- (4) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.
- (5) The Valuation Officer shall send a copy of the report of the estimate made under subsection (3) or sub-section (4), as the case may be, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made under sub-section (1).
- (6) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

#### **ANALYSIS**

1. Certain courts have held that reference to Valuation Officer can be made only for the purposes of capital gains. Section 142A over rules this view and reference to Valuation Officer can be made for purposes of making assessment/ reassessment. For example, valuation of assets under section 56(2)(x)/ (viib). Also where assessee does not co-operate in assessment and Assessing Officer wants to make additions on the basis of assessment to the best of his judgement, Assessing Officer can refer to the Valuation Officer to determine the FMV of assets acquired by the assessee in the previous year.
2. Certain courts held that Assessing Officer must reject books of accounts to exercise the power of reference to Valuation Officer. The Courts held that Assessing Officer, if he is not satisfied with correctness or completeness of books, should first reject the books of account and then make a reference to Valuation Officer. Newly substituted section 142A provides that Assessing Officer can make reference to the Valuation Officer whether or not he is satisfied with completeness or correctness of books of account.

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### **SECTION 143(1): NEW SCHEME OF PROCESSING OF RETURNS**

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- (i) Section 143(1) provides for computation of the total income of an assessee after making the following adjustments to the returned income:-
  - (a) any arithmetical error in the return; or
  - (b) an incorrect claim, if such incorrect claim is apparent from any information in the return.

- (c) Disallowance of loss claimed, if return is filed beyond due date u/s 139(1)
- (d) Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return
- (e) Disallowance of deduction u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if return is filed beyond due date u/s 139(1)

However, before making any such adjustments, in the interest of natural justice, intimation has to be given to the assessee requiring him to respond to such adjustments. Such intimation may be in writing or through electronic mode. The response received, if any, has to be duly considered before effecting any adjustment. However, if no response is received within 30 days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

- (ii) The term “an incorrect claim apparent from any information in the return” shall mean such claim on the basis of an entry, in the return, –
  - (a) of an item, which is inconsistent with another entry of the same or some other item in such return;
  - (b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished under this Act; or
  - (c) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.
- (iii) Tax, interest **and fee** should be computed on the basis of the total income computed after making the adjustments in (i) above.
- (iv) The sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of such tax, interest **and fee**, if any, so computed by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91 any tax paid on self-assessment and any amount paid otherwise by way of tax, interest **or fee**.
- (v) Based on the above adjustments, an intimation shall be prepared or generated and sent to the assessee within a period of one year from the end of the financial year in which the return was made. The intimation shall specify the sum determined to be payable by, or the amount of refund due to, the assessee.
- (vi) If any amount of refund is due to the assessee, the same shall be granted to the assessee.
- (vii) An intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax, interest **or fee** is payable by, or no refund is due to, him.

- (viii) On the other hand, where there is neither any adjustment nor any tax due from or refund payable to the assessee, the acknowledgement of the return shall be deemed to be the intimation under section 143(1).
- (ix) The scheme contemplates avoiding human interface and therefore, provides for computerised processing of returns for making the above adjustments i.e., the software will be designed to detect arithmetical inaccuracies and internal inconsistencies and make appropriate adjustments in the computation of the total income/fringe benefits.

**Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.**

**The acknowledgment of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee.**

#### **ANALYSIS OF SECTION 143(1)**

#### **1. ADJUSTMENTS TO BE MADE IN THE RETURNED TOTAL INCOME UNDER SECTION 143(1),-**

- (a) **An incorrect claim apparent from any information in the return shall mean a claim on the basis of an entry, in the return of an item, which is inconsistent with another entry of the same or some other item in such return;**

**Illustrations:** In the return filed manually, Depreciation schedule as per Income tax Act in the return states depreciation as per Income tax Act to be **Rs. 20,30,000** but assessee had claimed depreciation of **Rs. 24,30,000** while computing income from profits and gains of business or profession. Now, under section 143(1), **Rs. 4,00,000** shall be added to the returned income.

- (b) **An incorrect claim apparent from any information in the return shall mean a claim on the basis of an entry, in the return in respect of which, information required to be furnished to substantiate such entry, has not been furnished under this Act;**

**Illustrations: (i)** Assessee has claimed deduction under section 80G. The PAN of donee is not given in the ROI. The deduction under section 80G shall be disallowed by software under section 143(1).

- (ii) A charitable trust has claimed exemption under section 11(2) of **Rs. 5,00,000**. But the trust has not been attached Form 10A with the return which is necessary to claim exemption under section 11(2). Now software under section 143(1) shall disallow exemption under section 11(2).

- (c) **An incorrect claim apparent from any information in the return shall mean a claim on the basis of an entry, in the return in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.**

**Illustrations:** (i) If under section 24(1)(i) the deduction in respect of repairs is claimed in excess of 30% of the rental income, excess shall be disallowed as an apparent incorrect claim under section 143(1).

(ii) Similarly, if the deduction under section 80C is claimed more than the maximum permissible deduction under section 80C i.e., Rs. 1,50,000, the excess shall be disallowed under section 143(1).

(d) Assessee files a return of income for Assessment year 2021-2022 on 30.09.2021 as under :

Current year income	20,00,000
Less: B/F Loss of A/Y 2020-2021	<u>13,00,000</u>
Returned Income	<u>7,00,000</u>

The return of income was filed for Assessment Year 2020-21 on 31.12.2020 i.e. after the due date.

The software while processing the return for Assessment Year 2021-22 under section 143(1) will disallow the Loss of Rs. 13,00,000 and will compute the income at Rs. 20,00,000. Before making the adjustment of Rs. 13,00,000 an intimation shall be sent to the assessee for proposed disallowance. If assessee has taken condonation of delay for Assessment Year 2020-21 from Chief Commissioner of Income-tax for carry forward of loss, then he can respond to the intimation informing about such condonation and enclosing a copy thereof. In such a case, the adjustment of Rs. 13,00,000 shall not be made.

(e) The assessee filed a return of income for Assessment Year 2021-22 disclosing an income of Rs. 25,00,000. In the tax audit report, the tax auditor has mentioned that personal expenses of Rs. 2,00,000 have been debited to Profit & Loss Account and has also mentioned that prior period expenses debited to Profit & Loss Account are Rs. 3,00,000. However, assessee has not disallowed both the expenses since as per assessee, personal expenses are related to business and prior period expenditure crystallised during the Previous Year 31.03.2021 and are, therefore, allowable. According to assessee, both the expenses are allowable.

Now under section 143(1), the software while processing the return will disallow expenses of Rs. 5,00,000 indicated in the tax audit report. But before making addition of Rs. 5,00,000, an intimation shall be sent to the assessee informing about proposed disallowances. Assessee can respond to the intimation that tax audit report is wrong and expenses are allowable. But practically, after considering the response of the assessee, the software will disallow expenses of Rs. 5,00,000. Now assessee can file appeal to

Commissioner of Income-tax (Appeals) against the intimation made under section 143(1).

- (f) For Assessment Year 2021-22, the due date of filing of return is 30.09.2021. Assessee files a return on 30.11.2021 declaring Nil income. He has claimed deduction of Rs. 50,00,000 under section 10AA/80IA/80IB/80IAB/80IC/80ID/80IE.

The software while processing the return under section 143(1) shall disallow the deduction of Rs. 50,00,000 and shall compute the income at Rs. 50,00,000.

An intimation of proposed disallowance shall be sent to be assessee before making such disallowance.

**2. Intimation under section 143(1) shall be sent in the following three cases only:**

- (i) Where tax or interest is found payable on the basis of the return, after making the adjustments referred to in section 143(1) and after giving credit to the taxes and interest paid; or
  - (ii) Where any tax or interest is found refundable on the basis of the return, after making the adjustments referred to in section 143(1) and after giving credit to the taxes and interest paid; and
  - (iii) Where adjustments referred to in section 143(1) have been made resulting in increase / reduction of loss declared by the assessee and no tax or interest is payable by the assessee and no tax or interest is refundable to the assessee.
3. If there is no tax or interest payable or refundable on the basis of the return, or no adjustment is made resulting in reduction / increase in loss, then an intimation under section 143(1) shall not be sent to the assessee. In such a case, acknowledgement of filing of return of income is deemed as an intimation under section 143(1).
4. Notice under section 143(2) can be issued if an intimation under section 143(1) has been issued to the assessee. Even in cases where acknowledgement is deemed as an intimation under section 143(1), notice under section 143(2) can be issued to the assessee.
5. Section 143(1) is not an assessment but is an intimation/ deemed intimation. Intimation/deemed intimation under section 143(1) is not an assessment order.
6. Appeal to CIT(Appeals) can be filed against the order of Assessing Officer. Similarly revision application under section 264 can be made to CIT for revising the order of Assessing Officer. As per Finance Act, 2012, appeal is possible to CIT(Appeals) against the intimation/ deemed intimation under section 143(1). However, no revision application under section 264 can be made to CIT for revising an intimation/ deemed intimation under section 143(1).
7. Under section 263, the CIT can revise the order of Assessing Officer. Since, 143(1) is not an order, the CIT under section 263 cannot revise the intimation or deemed intimation under section 143(1).

8. As per the provisions of section 154, the Assessing Officer with a view to rectify any mistake apparent from record may:
- (i) Amend any order passed by him under the provisions of Income-tax Act.
  - (ii) Amend any intimation or deemed intimation under section 143(1).

As per section 154, the Assessing Officer shall make the amendment under section 154 on his own motion or where the mistake is brought to his notice by the assessee. The amendment under section 154 is done by passing a rectification order under section 154.

Therefore, under section 154 the Assessing Officer has the power to rectify a mistake apparent from record in the intimation/ deemed intimation under section 143(1). Assessee can also seek rectification under section 154 of any mistake apparent from record in the intimation/deemed intimation under section 143(1).

9. A return can be revised under section 139(5) even after the receipt of intimation under section 143(1) since 143(1) is not an assessment. Therefore, return can be revised under section 139(5) even if there is an intimation/ deemed intimation under section 143(1) subject to the conditions and time limits of section 139(5).
10. The demand in the intimation issued under section 143(1) should be paid within 30 days from the date of receipt of such intimation. If the assessee fails to pay the demand within said 30 days, then he shall be deemed to be an assessee in default and interest under section 220 and penalty under section 221 shall be levied.
11. As per section 143(1), the intimation for tax payable/ refundable shall not be sent after the expiry of one year from the end of the financial year in which return is filed. However, the limitation of one year shall not apply to issue of cheque of refund. Therefore, the cheque of refund can be granted at any time.

<b>SECTION 143(1D): PROCESSING OF RETURN IN CASE OF SCRUTINY</b>
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- (i) Section 143(1) requires processing of return of income filed under section 139(1) or in response to a notice issued under section 142(1).
- (ii) An intimation has to be prepared or generated and sent to the assessee specifying the sum payable or the refund due, to the assessee.
- (iii) No intimation can be sent after the expiry of one year from the end of the financial year in which the return is made. This is provided in the second proviso to section 143(1).
- (iv) In respect of returns furnished for A.Y.2017-18 or thereafter, processing of a return under section 143(1) is necessary even where a notice has been issued to the assessee under section 143(2).
- (v) However, to address the concern of recovery of revenue in doubtful cases, new section 241A provides that, for the returns furnished for A.Y.2017-18 or thereafter, where refund of any amount becomes due to the assessee under section 143(1) and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of the Principal

Commissioner or Commissioner, withhold the refund upto the date on which the assessment is made.

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**SECTION 143(2): NOTICE FOR MAKING SCRUTINY ASSESSMENT UNDER SECTION 143(3)**

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Where a return has been made under section 139, or in response to a notice under sub section (1) of section 142, the Assessing Officer or **the prescribed Income Tax Authority, as the case may be**, if considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return :

Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the Financial Year in which the return is furnished.

(Also Refer section 292BB on Page no. \_\_\_\_\_)

**Illustration - 1:** For Assessment Year 2021-2022, ROI was filed on:

(i) 30.9.2021

(ii) 31.3.2022

In both cases, notice under section 143(2) i.e., for scrutiny assessment can be served upto 30.9.2022.

**Illustration - 2:** For Assessment Year 2021-2022, the due date of filing of ROI is 30.9.2021. ROI is filed on 31.3.2022. Now notice under section 143(2) can be served on the assessee on or before 30.9.2022.

**Illustration - 3:** For previous year ended 31.03.2021 i.e. Assessment Year 2021-2022, the due date of filing ROI is 31.07.2021. ROI is filed on 12.11.2021.

Notice under section 143(2) must be served on the assessee on or before 30.09.2022.

**Illustration - 4:** Suppose in Illustration 3 above, the notice under section 143(2) is issued on 30.09.2022 and is received by the assessee on 02.10.2022.

Notice issued under section 143(2) is time barred and thus, invalid.

**Illustration - 5:** For Assessment Year: 2021-2022, the ROI was filed on 30.09.2021. Notice under section 143(2) served on 30.09.2022 asking for personal appearance & book of accounts. Another notice under section 143(2) served on 31.12.2022 asking for purchase ledger & sales ledger.

2<sup>nd</sup> Notice is continuation of 1<sup>st</sup> notice and therefore valid. If 1<sup>st</sup> notice served in time, then subsequent notices are in continuation of first notice and are valid.



**Is non-issuance of notice under section 143(2) by the Assessing Officer a defect not curable under section 292BB inspite of participation by the assessee in assessment proceedings?**

**CIT V. LAXMAN DAS KHANDELWAL (2019) (SC)**

**Supreme Court's Observations:**

1. The **law on the point** as regards applicability of the requirement of issue of notice under section 143(2) **is quite clear.**
2. According to section 292BB, if the assessee **had participated** in the proceedings, by way of legal fiction, notice issued would be **deemed to be valid** even if there be infractions as detailed in the said section.
3. The **scope of the provision** is to make service of notice having certain infirmities to be **proper** and valid if there was requisite participation on the part of the assessee.
4. It is, however, to be noted that the **section does not save complete absence** of issue of notice.
5. **For section 292BB to apply, the notice must have emanated from the Department.** It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself.

**Supreme Court's Decision:** The Supreme Court held that non - issuance of notice under section 143(2) is not a curable defect under section 292BB inspite of participation by the assessee in assessment proceedings.

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**SECTION 143(3): REGULAR/ SCRUTINY ASSESSMENT**

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On the day specified in the notice issued under sub-section (2), or as soon as afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and **determine the sum payable by him or refund of any amount due to him on the basis of such assessment.**

Provided that in case of an assessee who is required to furnish the return of income under section 139(4C), no order making an assessment of the total income or loss, shall be made by the Assessing Officer, without giving effect to the provisions of section 10, unless -

- (i) the Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of section 10, where in his view such contravention has taken place; and
- (ii) the approval granted to such institution has been withdrawn or notification issued in respect of such institution has been rescinded.

Provided further that where the Assessing Officer is satisfied that the activities of the university, college or other institution referred to in section 35(1)(ii)/(iii) are not being carried out in accordance with all or any of the conditions subject to which such university, college or other institution was approved, he may after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned university, college or other

institution, recommend to the Central Government to withdraw the approval and that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and the Assessing Officer.

#### **AMENDMENTS BY FINANCE ACT 2012**

**Amendment has been carried out in section 10(23C) and section 13 which provides that exemption under section 10(23C) or 11 or 12 shall not be available for the Assessment Year in which first proviso to section 2(15) becomes applicable even if Government/ Commissioner of Income-tax has not cancelled the approval granted for such previous year.**

**The amendment provides that exemption under section 10(23C) or 11 or 12 shall not be available for the previous year in which commercial receipts exceeds 20% of total receipts, whether or not the approval granted, or notification issued for such institutions has been cancelled. Exemption shall not be available even if Government/ Commissioner of Income-tax has not cancelled the approval/ notification granting exemption under section 10(23C) or 11 or 12.**

**Following amendment has been made by Finance Act, 2012:**

- **Assessing Officer shall not give exemption under section 10(23C) or under section 11 & 12 in case of a trust or institution for the previous year**
- **in which First Proviso to section 2(15) becomes applicable i.e. commercial / business receipts exceeds 20% of total receipts**
- **whether or not approval granted to such trust or institution has been cancelled under section 12AA or under section 10(23C)**
- **Assessing Officer will disallow exemption under section 10(23C) or 11 & 12 by operation of law.**

#### **ANALYSIS OF SECTION 143(2) AND SECTION 143(3)**

1. Where the assessee has not furnished his return of income, then notice under section 143(2) cannot be issued to him and consequently assessment under section 143(3) is not possible. This is because notice under section 143(2) can be issued only if the assessee has filed return under section 139 or in response to a notice issued under section 142(1).
2. If the assessment under section 143(3) is made without serving a notice under section 143(2), then the assessment is void-ab-initio.
3. If the assessment under section 143(3) is made in pursuance of a notice under section 143(2) served after the expiry of 6 months from the end of the Financial Year in which ROI is filed, then such assessment is void-ab-initio.
4. As per the guidelines issued by CBDT only 3% to 5% cases can be taken for an assessment year in SCRUTINY under section 143(3).
5. For making scrutiny assessment under section 143(3), the Assessing Officer is not required to possess any reasons to believe. He can issue notice under section 143(2) to ensure that assessee –
  - has not understated the income or
  - has not computed excessive loss or

- has not underpaid the tax in any manner.
- 6. CBDT has clarified that since under section 143(3), refund can be granted to the assessee, the Assessing Officer can reduce the income below the returned income and can assess the loss higher than the returned loss under section 143(3).

7. **GOETZE (INDIA) LTD. VS. COMMISSIONER OF INCOME-TAX [2006]**  
**(SUPREME COURT)-IMPORTANT**

**FACTS OF THE CASE:**

For the assessment year 2013-14 the assessee filed its return on September 30, 2013 and on November 12, 2015 sought to claim a deduction by way of a letter addressed to the Assessing Officer. The Assessing Officer disallowed it on the ground that there was no provision in the Income-tax Act, 1961 allowing an amendment in the return without a revised return. The Tribunal confirmed this, as did the High Court.

**HELD:**

The Supreme Court held that a claim can be made before the Assessing Officer in the assessment proceedings only through a revised return and not through a letter. Therefore, if a deduction has not been claimed in the return and the assessee wants to claim the said deduction in the assessment proceedings then he can do so, only by filing a revised return. The Assessing Officer cannot entertain such claim made by the assessee through a letter. The Supreme Court also observed that in this case they were dealing with the power of Assessing Officer and not with the power of ITAT which has the power to entertain a new ground of appeal not raised earlier as held in National Thermal Power Supply Co.

**Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income?**

**Orissa Rural Housing Development Corpn. Ltd. v. ACIT (2012) (Orissa)**

**High Court's Decision:** On this issue, the Orissa High Court held that the assessee can make a fresh claim before the Assessing Officer or make a change in the originally filed return of income only by filing revised return of income under section 139(5). There is no provision under the Income-tax Act, 1961 to enable an assessee to revise his income by filling a revised statement of income. Therefore, filling of revised statement of income is of no value and will not be considered by the Assessing Officer for assessment purposes.

The High Court, relying on the judgement of the Supreme Court in *Goetze (India) Ltd. v. CIT (2006) ITR 323*, held that the Assessing Officer has no power to entertain a fresh claim made by the assessee after filing of the original return except by way of filing a revised return.

8. **Section 153(1) - Time limit to pass the order under section 143(3)**  
No order of assessment under section 143(3) or 144 shall be made after the expiry of **12 months** from the end of the relevant Assessment Year. **(To be discussed later)**

**9. First Proviso to section 143(3)**

Exemptions under section 10(21), section 10(22B), section 10(23A), section 10(23B) and section **10(23C)(iv)(v)(vi)(via)** are available to the specified institutions by notification issued by the Central Government/ prescribed authority. These sections have been amended by the Finance Act, 2002 and the Central Government/ prescribed authority has been given the power to rescind the notification of exemption and forward a copy of the order rescinding the notification to the specified institution and to the Assessing Officer. The amendment provides that the Central Government/ prescribed authority shall rescind the notification if it is satisfied that the specified institution has not satisfied the requirements contained in the respective sections and/ or has not satisfied the conditions subject to which exemption was granted.

Section 139(4C) has been also introduced by Finance Act, 2002 which makes it mandatory for such specified institutions to file return of income. The objective of inserting section 139(4C) is that the Assessing Officer can check from the return of income as to whether the conditions specified in respective section/ notification has been satisfied or not.

In case the conditions specified in respective section/ notification have been contravened, then the Assessing Officer shall intimate such contraventions to the Central Government/ prescribed authority who shall withdraw the exemption by rescinding the notification.

First Proviso to section 143(3) provides that Assessing Officer cannot himself disallow the exemption under section 10(21)/ 10(22B)/ 10(23A)/ 10(23B)/ 10(23C)**(iv)(v)(vi)(via)** while making an assessment under section 143(3). He can under section 143(3) disallow the exemption under the said sections only if the Government/ prescribed authority has rescinded the notification withdrawing the exemption.

Section 153 has been correspondingly amended and the time limit for making assessment under section 143(3) shall be increased where the Assessing Officer intimates the contravention to Central Government/ prescribed authority.

**10. Second Proviso to section 143(3)**

Second Proviso has been inserted to section 143(3) and simultaneously section 139(4D) has been inserted. Section 139(4D) makes it mandatory for the university, college or other institution referred to in section 35(1)(ii) /35(1)(iii) to file the return. Second proviso to section 143(3) empowers the A.O. to recommend to the Central Government to withdraw the approval under section 35(1)(ii)/ 35(1)(iii) in case the A.O. finds that such institution is not complying with the conditions subject to which approval was granted to it.

**AMENDMENT MADE BY FINANCE ACT 2018**

A new scheme for the purpose of making assessments has been coined so as to impart greater transparency and accountability,

- (i) by eliminating the interface between the Assessing Officer and the assessee,
- (ii) optimal utilization of the resources, and
- (iii) introduction of team-based assessment.

For this purpose, a new sub-section (3A) has been inserted (with effect from April 1, 2018) which would enable the Central Government to prescribe the aforementioned new scheme for scrutiny assessments, by way of notification in the Official Gazette.

Further, sub-section (3B) has been inserted which empowers the Central Government to direct (by notification in the Official Gazette) that any of the provisions relating to assessment shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified therein.

However, no such direction shall be ~~issued after March 31, 2020.~~

### **AMENDMENT MADE BY FINANCE ACT 2020**

#### ***Modification of e-assessment scheme.***

1. *Section 143 of the Act provides the manner for processing and assessment of return of income (ITR) where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142 of the Act.*
2. *Sub-section (3A) of section 143 provides that the Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) of section 143 so as to impart greater efficiency, transparency and accountability by certain means specified therein. Accordingly, E-assessment Scheme, 2019 was notified under sub-section (3A) of Section 143 of the Act.*
3. *It is proposed to amend sub-section (3A) of section 143 of the Act to, -*
  - (i) *expand the scope so as to include the reference of section 144 of the Act relating to best judgement assessment in the said sub-section;*
  - (ii) *provide that Central Government may issue any direction under sub-section (3B) of the said section upto 31st March 2022.*

*This amendment will take effect from 1st April 2020.*

<b><u>Notice under section 142(1)</u></b>	<b><u>Notice under section 143(2)</u></b>
1. Notice to call for ROI/ books of Accounts/other information.	1. Notice for making assessment under section. 143(3).
2. By issuing notice under section. 142(1)(ii) alone, assessment is not possible.	2. Assessment under section. 143(3) is possible only if the notice under section. 143(2) has been issued.
3. Notice can be issued even if the assessee has not filed the ROI.	3. Notice can be issued only if the assessee has filed ROI.
4. No time limit prescribed in law for issue of this notice.	4. Time limit of 6 months prescribed for service of notice.

5. Prior approval of JC required in certain cases	5. No such approval is required.
6. Books of Accounts can be asked for a limited period (3 years).	6. No such restriction,

### **SECTION 144: BEST JUDGEMENT ASSESSMENT**

If any person

- (a) fails to furnish a return of income under section 139(1) and has not furnished the return under section 139(4) **up to the date of issue of show cause notice under section 144**, or
- (b) fails to comply with all terms of a notice issued under section 142(1)(i) or section 142(1)(ii), or
- (c) fails to comply with a direction for special audit issued under section 142(2A), or
- (d) fails to comply with all terms of a notice issued under section 143(2),

then the Assessing Officer after taking into account all relevant material which he has gathered, shall make an assessment to the best of his judgement and **determine the tax payable by the assessee.**

#### **KEY NOTES:**

1. The Assessing Officer shall not make the assessment unless he gives an opportunity of being heard to the assessee. The opportunity of being heard shall be given by serving a notice upon the assessee in which he shall be asked to show cause as to why a best judgement assessment should not be made on him. **[Show cause notice under section 144]**
2. This show cause notice is not required to be issued where a notice under section 142(1)(i)(ii) has already been issued to the assessee and assessee has not complied with the notice under section 142(1)(i)(ii).

### **ANALYSIS OF SECTION 144**

1. If an assessment under section 144 is made without giving a show cause notice under section 144 [except where a notice has been issued under section 142(1)(i)(ii)], then the assessment is void-ab-initio.
2. The words "or refund of any amount due to him" were deleted from section 144. As per the clarification issued by CBDT, the Assessing Officer under section 144 cannot assess the income below the returned income and cannot assess the loss higher than the returned loss.
3. The assessment under section 144 cannot be made in an arbitrary manner or on adhoc basis. The assessment must be based on the material which the Assessing Officer collects, e.g. last year's ROI, current year's ROI, growth rate of industry etc. The Assessing Officer must specify the basis of computation of income under section 144 and the basis must be a rational and scientific basis. The order under section 144 should be a SPEAKING ORDER.
4. **Section 153(1) - Time limit to pass the order under section 144**  
No order of assessment under section 143(3) or 144 shall be made after the expiry of **12 months** from the end of the relevant Assessment Year.

**Illustration:**

For Assessment Year 2021-2022 the due date is 30.09.2021 and the ROI is not filed till 31<sup>st</sup> December, 2021. On 31.12.2021, the A.O. issues a show cause notice under section 144 to the assessee to show cause as to why a best judgement assessment should not be made on him for failure to file ROI under section 139(1) and 139(4). In the said show cause notice the assessee is asked to file his reply by 30<sup>th</sup> January, 2022.

**Case 1:** The assessee files a reply to the show cause notice on 15.1.2022 stating that because of a death in the family, he was not able to file the ROI. Along with the reply he files a ROI on 15.1.2022.

**Case 2:** The assessee does not reply to the show cause notice or his reply is not satisfactory (i.e. he gives no valid reasons for failure to file ROI). The assessee files a return on 25.1.2022.

**Answer:**

**Case 1:** The return filed on 15.1.2022 is a valid return under section 139(4). Since there is a reasonable cause for the failure to file ROI, the Assessing Officer shall drop the proceeding under section 144.

**Case 2:** The return filed on 25.1.2022 is a valid return under section 139(4). Since the assessee does not reply to the show cause notice or his reply is not satisfactory, the A.O. shall make a best judgement assessment under section 144. While making the best judgement assessment under section 144, the Assessing Officer shall gather information from the return filed on 25.1.2022.

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**SECTION 144A: POWERS OF THE JOINT COMMISSIONER TO ISSUE DIRECTIONS IN CERTAIN CASES**

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1. **A Joint Commissioner may,**
  - (a) on his own motion, or
  - (b) on a reference made to him by the Assessing Officer, or
  - (c) on the application of an assessee,

call for and examine the record of any proceeding in which an assessment is pending.
2. If he considers that having regard to the nature of the case or the amount involved or for any other reason, it is necessary to issue directions, then he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment.
3. Such directions shall be binding on the Assessing Officer.
4. No directions prejudicial to the assessee shall be issued before an opportunity of being heard is given to the assessee.

**ANALYSIS OF SECTION 144A**

1. The Directions under section 144A can be issued only if the case is pending in an assessment/ reassessment.
2. The Directions under section 144A can be issued by the Joint Commissioner to the Assistant Commissioner/ Deputy Commissioner/ Income Tax Officer.
3. The Directions under section 144A can be in favour of assessee or can be against the assessee.
4. No appeal can be filed against the Directions issued under section 144A. If the Directions issued under section 144A are prejudicial to the assessee then AC/ DC/ ITO will disallow the deduction or tax the receipt, in accordance with Directions of Joint Commissioner under section 144A. The assessee can file an appeal to CIT (Appeal) against the assessment order of DC/ AC/ ITO.

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## CHAPTER 13. INCOME ESCAPING ASSESSMENT

### SECTION 147: ASSESSMENT OR REASSESSMENT OF INCOMES ESCAPING ASSESSMENT

Where the Assessing Officer has **reasons to believe** that any income chargeable to tax for any Assessment Year has escaped assessment, then he may subject to the provisions of section 148 to section 153, assess or reassess such income **and also any other income which has escaped assessment and which comes to his notice subsequently during the course of proceedings under this section.\***

**Provided that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject-matter of any appeal or revision, which is chargeable to tax and has escaped assessment.**

**(Proviso inserted by Finance Act, 2008)**

\* Without issuing a fresh notice under section 148 provided that the income which comes to his notice subsequently during the course of proceedings under section 147 is of the same Assessment Year for which notice under section 148 has already been issued.

#### **Analysis of Proviso to section 147 inserted by Finance Act, 2008**

##### **Doctrine of Partial Merger**

As per this doctrine, the order of Assessing Officer merges with the order of appellate authority. The judicial controversy centered around the question as to whether the entire order of assessment passed by the Assessing Officer gets merged with the order of appellate authority or the merger is in respect of that part of order of Assessing Officer which relates to matters considered and decided in an appeal.

One view of the judiciary was that there is a complete/ total merger of the order of Assessing Officer with the order of appellate authority, once an appeal is decided on one or two points alone.

The other view of the judiciary was that there is a "partial merger" and only that part of order of Assessing Officer which relates to matters considered and decided in an appeal gets merged with the order of appellate authority.

The proviso to section 147 introduced by Finance Act, 2008 affirms the concept of partial merger and overrules the concept of total merger. For example:

Assessing Officer order under section 143(3)	Appeal to Commissioner of Income-tax (Appeals) or Revision under section 264 to Commissioner of Income-tax
Expense A – Allowed Expense B – Allowed Expense C – Allowed Expense D – Disallowed	Made on Expense D and Commissioner of Income-tax (Appeals) or Commissioner of Income-tax under section 264 allows expense D.

As per the concept of total merger, the entire order of Assessing Officer merges with the order of appellate authority/ Commissioner of Income-tax. As per this concept, now Assessing Officer cannot re-open any matter under section 147 and cannot disallow even expenses A, B & C.

As per partial merger, only part of order of Assessing Officer i.e., expense D has merged with the order of Commissioner of Income-tax (Appeals) / Commissioner of Income-tax. And as per this concept, the Assessing Officer can re-open the assessment under section 147 and disallow A, B and C. The concept of partial merger has been affirmed in section 147. Assessing Officer can re-open assessment under section 147 to disallow A, B, & C. Assessing Officer cannot re-open assessment under section 147 to disallow expense D which has been a subject matter of appeal/ revision. **Therefore, the matters which have gone for appeal or revision cannot be re-opened under section 147.**

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#### EXPLANATION TO SECTION 147: DEEMED ESCAPED INCOME

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	Case	When income is deemed to have escaped assessment
(i)	Where the assessee's total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount, which is not chargeable to income-tax.	No return of income has been furnished by the assessee
(ii)	Where a return of income has been furnished by the assessee but no assessment has been made	It is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.
(iii)	Where the assessee is required to furnish a report in respect of any international transaction under section 92E.	The assessee has failed to furnish such report
(iv)	Where an assessment has been made	<p>(a) income chargeable to tax has been under-assessed</p> <p>(b) such income has been assessed at too low a rate</p> <p>(c) such income has been made the subject of excessive relief under this Act</p> <p>(d) excessive loss or depreciation or any other allowance under this Act has been computed.</p>
(v)	where a return of income has not been furnished by the assessee	On the basis of information or document received from the prescribed income-tax

		authority, under section 133C(2), it is noticed by the Assessing Officer that the income of the assessee exceeds the basic exemption limit
(vi)	where a return of income has been furnished by the assessee	On the basis of information or document received from the prescribed income-tax authority, under section 133C(2), it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return

In addition, income chargeable to tax has escaped assessment, where a person is found to have any asset (including financial transaction in any entity) located outside India.

**Note -** The CBDT has, vide Circular No.40/2016 dated 9.12.2016, clarified that reopening of cases under section 147 is feasible only when the Assessing Officer "has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and not merely on the basis of any reason to suspect. Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, past assessments cannot be reopened merely on the ground that the current year's turnover has increased.

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### EXPLANATION 3 TO SECTION 147: NEW REASONS FOR INCOME ESCAPING ASSESSMENTS

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**For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.**

#### **Illustration:**

The Assessing Officer issues notice under section 148 to the assessee for the Assessment Year **2014-2015** on **1.1.2020**. The Assessing Officer has found business income in Mumbai which has not been disclosed by the assessee in the return. The Assessing Officer has recorded the reasons for re-opening the case under section 148 to be the concealed income of Mumbai business. While Assessing Officer is making assessment under section 147, he also comes across income of the Pune business which was not disclosed by assessee in ROI and for which reasons were not recorded by Assessing Officer while issuing notice under section 148. Assessing Officer assesses under section 147 income from Mumbai Business as well as income from Pune Business. Assessee contends that assessment under section 147 is invalid since reasons for assessing the income from Pune Business have not been recorded by Assessing Officer while issuing notice under section 148.

**Answer:**

The contention of assessee is incorrect. It has been clarified that for the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

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**SECTION 148: SERVICE OF NOTICE WHERE INCOME HAS ESCAPED ASSESSMENT**

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- 1) Before making an assessment or reassessment under section 147, the Assessing Officer shall **serve** on the assessee a notice requiring him to furnish the return of income within the time specified in the notice
- 2) The Assessing Officer shall before issuing a notice under this section, **record his reasons** for doing so.

**ANALYSIS**

1. "Reasons to believe" includes matters arising out of CAG Audit Party Report which indicates that the income has escaped assessment. However, opinion of CAG Audit party does not amount to reason to believe. If CAG Audit party give concrete evidence that income has escaped assessment, then concrete evidence amounts to 'Reason to Believe'.
2. If the Assessing Officer allowed an expense & later on, he wants to disallow the expense by invoking section 147 because of change in his personal opinion, the Assessing Officer cannot invoke section 147. Mere change in personal opinion does not amount to "Reasons to believe".

**CIT V. KELVINATOR OF INDIA LTD. (SUPREME COURT)**

The Supreme Court held that power to re-open the case under section 147 is much wider, yet that does not mean that the section gives arbitrary powers to the Assessing Officer to reopen assessments on the basis of 'mere change of opinion'. The apex court laid emphasis on the conceptual difference between power to review and power to reassess. It further held that the Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment.

Review means taking second view, if two views are possible. If Assessing Officer has taken a view in assessment, then he cannot change his view under section 147 on the basis of his personal opinion.

3. The Assessing Officer cannot invoke the provisions of section 147 on the basis of rumours, gossips and suspicion. Rumours, gossips and suspicion does NOT amount to "Reasons to believe".
4. **RANBAXY LABORATORIES LTD.V. CIT (DELHI)**  
Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original "reason to believe" on basis of which the notice was issued ceased to exist?

As per section 147, the Assessing Officer may assess or reassess such income and also any other income chargeable to tax which has escaped assessment, and which comes to his notice in the course of proceedings under this section. The Delhi High Court observed that the words "and also" used in section 147 are of wide amplitude. The assessment or reassessment must be in respect of the income, in respect of which the Assessing Officer has formed a reason to believe that the same has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the "reason to believe" is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If he intends to do so, a fresh notice under section 148 would be necessary.

5. **CIT VS. JET AIRWAYS (I) LTD. [2010] (BOM.)**

Section 147 has the effect that the Assessing Officer has to assess or reassess the income ('such income') which escaped assessment and which was the basis of formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. **However, if after issuing a notice under section 148, he accepts the contention of the assessee and holds that the income for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income, and if he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.**

6. **AVENTIS PHARMA LTD. V. ACIT (2010) (BOM.)**

**Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion?**

The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The existence of tangible material is essential to safeguard against an arbitrary exercise of this power. In this case, the High Court observed that there was no tangible material before the Assessing Officer to hold that income had escaped assessment within the meaning of section 147 and the reasons recorded for reopening the assessment constituted a mere change of opinion. Therefore, the reassessment was not valid.

7. The following constitutes "Reasons to believe" for invoking section 147: -

- (i) A later Supreme Court Judgement disallowing an expense/ taxing a receipt.
- (ii) Retrospective Amendment in Law disallowing an expense/ taxing a receipt.
- (iii) Evidence in possession of Assessing Officer that the Assessee has understated the income.
- (iv) Evidence in possession of Assessing Officer that the Assessee has claimed excessive loss/ deductions, allowances, reliefs.
- (v) Mistake apparent from records.

8. For making an assessment or reassessment under section 147, a separate notice under section 148 is required to be issued for each Assessment Year whose income is to be assessed or reassessed under section 147.

**Illustration 1:** The Assessing Officer issues a notice under section 148 to assess the income under the head "Profits and gains of business or profession". During the course of the assessment proceedings under section 147, he notices that income under the head "Capital gains" has also escaped assessment. Can he assess the income under the head "Capital gains" also?

**Answer:** As per the provisions of section 147, the Assessing Officer can assess the income under the head P/G/B/P as well as capital gains. He is not required to issue a fresh notice under section 148 to assess the income under the head capital gains.

**Illustration 2:** For Assessment Year 2016-2017, the Assessing Officer issued a notice under section 148 on 01.01.2021 to assess the income under the head "Profits and gains of business or profession". In the course of proceedings under section 147, he finds that:

**Case I:** Income under the head Capital Gains of Rs. 2,00,000 has also escaped assessment for Assessment Year 2016-2017.

**Case II:** Income under the head Capital Gains of Rs. 2,00,000 has also escaped assessment for Assessment Year 2015-2016.

**Whether Assessing Officer is required to give a fresh notice under section 148?**

**Answer:** **Case I:** Income under the head Capital Gains can be assessed along with P/G/B/P. The Assessing Officer is NOT required to issue a fresh notice under section 148.

**Case II:** A separate notice under section 148 is required to be issued for Assessment Year 2015-2016 to assess the capital gains under section 147.

9. The assessee is required to file the ROI under section 148 even if he has filed the ROI earlier in the normal course. **Return filed under section 148 cannot be revised.**

**Illustration:** For Assessment Year 2015-2016, ROI is filed under section 139(1) declaring an income of Rs. 2,00,000. The assessee receives a notice under section 148 on 01.01.2020 and:

**Case I:** Assessee complies with the notice and files a return under section 148 declaring an income of Rs. 15,00,000.

**Case II:** Assessee does not comply with the notice under section 148.

**Answer:**

**Case I:** Assuming that the Assessing Officer assesses the income under section 147 at Rs. 15,00,000, he shall levy penalty for concealment on Rs. 13,00,000. Assessing Officer will be lenient in levying penalty for concealment of income.

**Case II:** The Assessing Officer shall assess the income under section 147 to the best of his judgement. Assuming that the Assessing Officer assesses the income under section 147 at Rs. 15,00,000, he will levy maximum penalty for concealment of income on Rs. 13,00,000.

**10. H. K. Buildcon Ltd. v. Income-tax Officer (Guj.)**

**In case of change of incumbent of an office, can the successor Assessing Officer initiate reassessment proceedings on the ground of change of opinion in relation to an issue which the predecessor Assessing Officer, who had framed the original assessment, had already applied his mind and come to a conclusion?**

On this issue, the Gujarat High Court referred to the ruling of the Apex Court in CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561, wherein it was held that the Assessing Officer has the power only to reassess and not to review.

Reassessment is not possible if there is a change in opinion of the successor Assessing Officer. Change in opinion does not amount to reasons to believe.

**11. The Assessing Officer is duty bound to supply to the assessee the reasons recorded by him for issue of notice under section 148, after the assessee has filed the ROI (Reasons are supplied on the request of the assessee).****JAWAHARLAL GUPTA (HIGH COURT)**

The assessment of Assessment Year 2011-2012 was reopened by a notice under section 148. The assessee demanded in writing for supply of a copy of the reasons recorded by the Assessing Officer on the basis of which reassessment proceedings were launched. The assessee contended that the notice under section 148 is invalid since he was not supplied with a copy of the reasons recorded by the Assessing Officer for reopening the assessment. The department contended that, by a letter the assessee was informed that he could make inspection of the reasons recorded for issuing notice under section 148 after he had filed the return. The Court gave the direction that before the Assessing Officer proceeds further with the assessment in pursuance of a notice under section 148, he shall confront the assessee with the substance of the reasons recorded by him and supply him a certified copy of the reasons.

**12. Is recording of satisfaction and quantification of escaped income a pre-condition for issuing notice under section 148 after 4 years from the end of the relevant assessment year?****Amarnath Agrawal v. CIT (2015) (All)**

**Facts of the case:** The assessee along with four others had obtained a lease of land and was in possession of the same from 1953. Subsequently, the State Government introduced a policy for conversion of lease-hold to free-hold. The assessee applied for conversion before the District Magistrate in 1997 and a sale deed was executed. The assessee deposited the necessary charges as demanded by the State Government and a freehold sale deed dated 25<sup>th</sup> March, 1998 was executed. The assessee sold a portion of the land during the F.Y. 1999-2000 and admitted the same as long-term capital gain taking into account the lease hold period also. In the assessment, the admission of income as long-term capital gain was accepted. However, after the expiry of four years from the end of the relevant assessment year, proceeding for reassessment of such income as short-term capital gains was resorted to by the Revenue on the ground that the lease hold period should not be considered for determining the period of holding of freehold land transferred. The assessee filed

a writ challenging the validity of notice issued under section 148 stating that the requirements of section 149 read with section 151 were not considered by the Revenue.

**High Court's Opinion and Decision:**

The High Court observed that two distinct conditions must be satisfied for assuming jurisdiction to issue a notice under section 148 after a period of 4 years viz. (i) escapement of income; and (ii) omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.

Under section 149(1)(b), it is imperative for the Assessing Officer, in his reasons, to state that the escaped income is likely to be **Rs. 1 lakh** or more. This is an essential ingredient for seeking approval and the basis on which satisfaction is to be recorded by the competent authority under section 151. If the condition precedent to substantiate the satisfaction of escapement of income is not made, the issuance of notice would be invalid.

In this case, since no reasons were recorded that the escaped income is likely to be **Rs. 1 lakh** or more so that the Chief Commissioner or Commissioner may record his satisfaction under section 151, the initiation of reassessment proceedings after four years was barred by time. The reasons recorded by the Assessing Officer were that the assessee had computed long-term capital gains tax liability, whereas he was liable to pay short-term capital gains tax, since he had sold a portion of the property within 3 years from the date of conversion of leasehold land into a freehold land.

The High Court observed that the property was held for more than 3 years and the conversion from leasehold to freehold being an improvement of the title did not have any effect on the taxability of profits. The reasons recorded by the Assessing Officer did not indicate any failure on the part of the assessee to disclose fully and truly all material facts at the time of assessment; it also did not indicate that the quantum of escapement of income exceeds **Rs. 1 lakh**. Accordingly, the High Court held that, in this case, the issue of notice under section 148 after the four-year time period was not valid.

- 13. Is the notice for reassessment issued under section 148 on the basis of tax evasion report received from the Investigation Unit of the Income-tax department valid, if such notice has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP?**

**SKY LIGHT HOSPITALITY LLP V. ASSISTANT CIT [2018] (DEL)**

**Facts of the Case:** Sky Light Hospitality (SH) LLP, a Limited Liability Partnership, had acquired the rights and liabilities of Sky Light Hospitality Private Limited (SHPL) upon conversion under the Limited Liability Partnership Act, 2008. The return for the relevant assessment year filed by SHPL was processed under section 143(1) and was not subjected to



scrutiny assessment. However, upon further receipt of a tax evasion report, a reassessment notice had been issued under section 148. The petitioner-LLP has filed a writ petition to quash the notice and the reassessment proceedings.

**Issue:** The issue under consideration is whether a notice for reassessment issued under section 148 on the basis of tax evasion report received from the Investigation Unit of the Income-tax department can be treated as valid, if such notice has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP.

**Delhi High Court's Observations:**

1. The High Court dismissed the contentions of the petitioner. Firstly, as long as there is "reason to believe" and not mere "reason to suspect", Courts should not interject to stop the adjudication process.
2. Secondly, there is clear evidence that the notice was erroneously addressed to SHPL instead of SH LLP. The error or mistake was that the notice did not record the conversion of SHPL into SH LLP. However, it is clearly evident that the notice was meant for the assessee-LLP and no one else.

**Delhi High Court's decision:**

3. The Delhi High Court held that the notice issued under section 148 on the basis of tax evasion report received from the Investigation unit of the Income-tax department is valid, since there was reason to believe on the basis of the said report that income had escaped assessment, even though the notice was erroneously issued in the name of the erstwhile company which has now been converted into LLP.
4. The Court clarifies that it has passed no opinion on the merits of the case which will be duly dealt with, by the Assessing Officer. The petitioner-LLP is required to appear before the Assessing Officer to deal with the merits of the issues pertaining to the notice.

***Note -** The special leave petition filed against the aforementioned decision of the Delhi High Court was dismissed by the Supreme Court.*

14. If the assessee demands the reasons recorded by Assessing Officer for issue of notice under section 148 after filing of ROI, and the Assessing Officer does not supply the reasons, then the Assessing Officer cannot proceed further under section 147.
15. If the reasons recorded by the Assessing Officer for issue of notice under section 148 are invalid, then the assessee can file a WRIT PETITION in the High Court challenging the issue of notice under section 148. If the High Court is satisfied that there were no Valid Reasons, then the High Court shall quash the notice issued under section 148.
16. The notice under section 148 is valid if it is issued within the time limits prescribed under section 149(1). As per section 148, the Assessing Officer shall ensure that before he makes assessment/ reassessment under section 147, the notice has been served on the assessee. Assessment/ Reassessment made under section 147, without the service of notice under section 148 is void-ab-initio. The service of notice under section 148 can take place after the time prescribed under section 149(1).
17. The Finance Act, 2006 provides that if:

- a notice under section 148 has been served on the assessee
- and the assessee files a return in response to a notice under section 148
- then the Assessing Officer should serve the notice under section 143(2) within 6 months from the end of the Financial Year in which the return was filed under section 148.
- If a notice under section 143(2) is served after 6 months from the end of the Financial Year in which return was filed under section 148, then proceedings under section 147 shall be INVALID.

### ANALYSIS

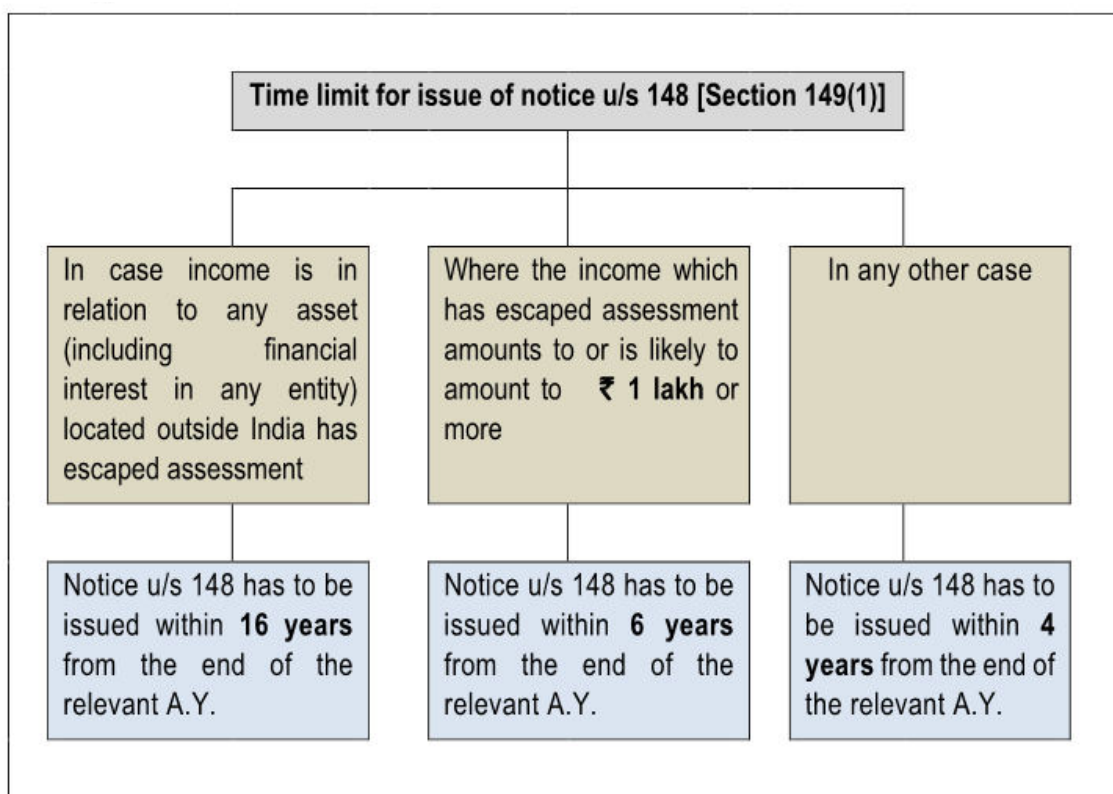
- Practically what happens is that the Assessing Officer issues a notice under section 148 and asks the assessee to furnish the return of income. Thereafter, for getting the evidence and books of account and the personal attendance of the assessee, the Assessing Officer issues a notice under section 143(2).
  - What happened practically was that although the notice under section 148 was issued within the prescribed time of section 149(1), the notice under section 143(2) was served on the assessee after the expiry of 6 months from the end of the Financial Year in which return was filed under section 148.
  - The Tribunals held that the assessment/ reassessment made under section 147 are invalid because the notice under section 143(2) has been served after 6 months from the end of the Financial Year in which return under section 148 was filed.
  - **THEREFORE, IT HAS BEEN PROVIDED IN LAW THAT FOR A RETURN FILED IN RESPONSE TO A NOTICE UNDER SECTION 148, THE NOTICE UNDER SECTION 143(2) MUST BE SERVED WITHIN 6 MONTHS FROM THE END OF THE FINANCIAL YEAR IN WHICH RETURN WAS FILED. OTHERWISE ASSESSMENT/ REASSESSMENT UNDER SECTION 147 SHALL BE VOID.**
- 18. Section 153(2) -Time Limit for passing the order under section 147**  
No order of assessment or reassessment under section 147 shall be made after the expiry of **12 months** from the end of the Financial Year in which notice under section 148 was served on the assessee.

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**SECTION 149(1): TIME LIMITS FOR ISSUE OF NOTICE UNDER SECTION 148**


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Notice under section 148 must be issued within the following time limit:



As per section 149(3), if the person on whom a notice under section 148 is to be served is a person treated as an agent of a non-resident under section 163 and the assessment, reassessment or re-computation in pursuance of the notice is to be made on him as the agent of such non-resident, there is a time limit of 6 years from the end of the relevant assessment year, beyond which such notice cannot be issued.

**Illustration:**

- (i) Assessing Officer finds that assessee has deposited the following amounts in an bank account in Switzerland:

Date of deposit	Assessment Year	Amount	Notice under issued upto section 148 can be
On 1.1.1999	1999-2000	Rs.2 cr	31-3-2016
On 1.1.2001	2001-2002	Rs.3 cr	31-3-2018
On 1.1.2004	2004-2005	Rs.5 cr	31-3-2021

The assessee does not give any explanation or explanations offered by him are not satisfactory regarding the source of deposit. It shall be deemed that income of assessee has escaped assessment and Assessing Officer can issue notice under section 148 as above.

- (ii) **Section 149(2)** provides that the provisions of section 149(1) as to issue of notice shall be subject to the provisions of section 151.

- (iii) Would the words "shall be issued" used in section 149 means 'mere signing of notice by the Assessing Officer or 'handing over of the notice in the hands of the proper officer for serving it to the assessee to constitute a valid notice issued within the prescribed time limit?

**Kanubhai M. Patel (HUF)(2011) (Guj.)**

In the present case, the assessee filed a return of income for the assessment year 2013-2014. The assessee did not received any notice under section 143(2). On 8th April, 2020, the assessee received a notice under section 148 dated 31st March, 2020 for the assessment of income relating to assessment year 2013-2014 under section 147. The assessee, on inquiry from the post office, found out that the department had sent the covers for issuing notice to the speed post centre (for booking) only 7th April, 2020 and not on 31st March, 2020 and the Revenue also did not challenge this finding of the assessee.

The assessee, therefore challenged the legality and validity of the notice dated 31<sup>st</sup> March, 2020 issued by the department under section 148 as being time barred contending that the impugned notice has been issued beyond the time limit prescribed under the provision of section 149 i.e. after a period of six years from the end of the relevant assessment year. The assessee contended that the date of issue of the notice under section 148 would be the date on which the same have been dispatched by registered post i.e., 7<sup>th</sup> April, 2020 and not the date of signing of the notice by the Assessing Officer i.e. 31<sup>st</sup> March, 2020.

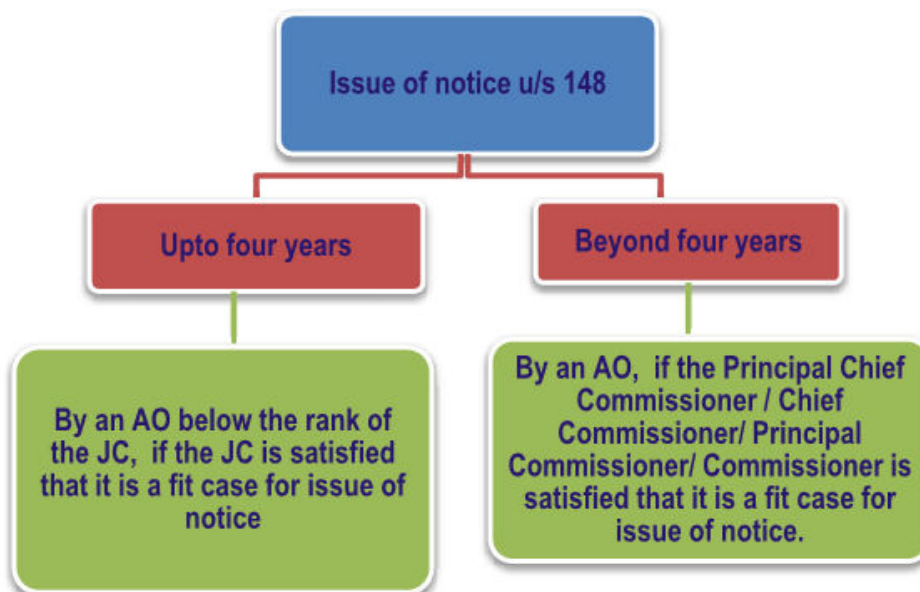
In the present case, the notice has been signed on 31<sup>st</sup> March, 2020. Whereas the same were sent to the speed post centre for booking only on 7<sup>th</sup> April, 2020. Held, that mere signing of notice on 31<sup>st</sup> March, 2020 cannot tantamount to issuance of notice as contemplated under section 149. The date of issue would be the date on which the same were handed over for service to the proper officer, which in the facts of the present case, would be the date on which the said notices were actually handed over to the post office for the purpose of effecting service on the assessee.

Hence, the date of issue of the said notice would be 7<sup>th</sup> April, 2020 and not 31<sup>st</sup> March, 2020. Therefore, the aforesaid notice under section 148 in relation to the assessment year 2013-2014, having been issued on 7<sup>th</sup> April 2020, is beyond the period of six years from the end of the relevant assessment year and clearly barred by limitation.

<b>SECTION 151: SANCTIONS FOR ISSUE OF NOTICE UNDER SECTION 148</b>
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- (i) Section 151 requires the Assessing Officer to obtain sanction from certain authorities before issue of notice for reassessment of income under section 148, under certain specified circumstances.
- (ii) The simplified approval regime with effect from 1.6.2015 for issue of notice for reassessment is given hereunder –

	Time limit (from the end of the relevant A.Y.)	Issue of Notice under section 148 by	Competent authority who has to be satisfied on the reasons recorded by the A.O., that it is a fit case for the issue of such notice
(1)	Up to 4 years	Assessing Officer below the rank of Joint Commissioner	Joint Commissioner
(2)	After 4 years	Assessing Officer	Principal Chief Commissioner/ Chief Commissioner/Principal Commissioner/ Commissioner



It is further clarified that in the above cases, the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or the Joint Commissioner, as the case may be, has to be satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148. However, these authorities are not required to issue the notice themselves.

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#### **R.K. UPADHYAYA VS. SHENEBHAI P. PATEL (SUPREME COURT)**

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There is a clear distinction between the words "issue" and "serve". Section 149(1) lays down the time limits for issue of notice. Therefore, if a notice is issued within the time limit prescribed under section 149(1) but is served after that date, it will be a valid notice.

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#### **EXCEPTIONS TO THE TIME LIMITS GIVEN IN SECTION 149(1)**

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##### **1. FIRST PROVISIO TO SECTION 147**

Where an assessment has been made earlier under section 143(3) or under section 147, then the notice under section 148 shall not be issued after the expiry of 4 years from the end of the relevant assessment year if both the following conditions are satisfied.

- (i) Assessee has filed return of income which he was required to furnish under any provision of Income Tax Act, **AND**

- (ii) Assessee has disclosed fully and truly all material facts necessary for assessment.

**KEY NOTE:**

This is possible only when income has escaped assessment because of mistake of Assessing Officer. (Refer Compendium for Example)

**SECOND PROVISO TO SECTION 147**

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.

**2. SECTION 150 - NO TIME LIMIT FOR ISSUE OF NOTICE**

Notwithstanding anything contained in section 149, a notice under section 148 may be issued at any time for the purposes of making an assessment or reassessment in consequence of or in order to give effect to the finding or direction contained in an order under section 250, 254, 260A, 262, 263 or 264 of the Income-tax Act or the ORDER OF A COURT UNDER ANY OTHER LAW.

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**SECTION 152: OTHER PROVISIONS**

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**1) Income escaping assessment to be charged to tax at rates applicable for respective years [Section 152(1)]**

In the case of any assessment or reassessment made under section 147, the income escaping assessment would be chargeable to tax at the rate applicable to the respective years in which such income is liable to be taxed.

**(2) Assessee entitled to claim dropping of proceedings under section 147 in certain cases [Section 152(2)]**

- Where an assessment is reopened under section 147,
- the assessee may,
- if he has not disputed any part of the original assessment order for that year either before the CIT(Appeals) under section 246A or before the CIT under section 264,
- claim that the proceedings under section 147 shall be dropped
- on his showing that
- he had been assessed on an amount not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account,
- or the assessment had been properly made.

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**SUN ENGINEERING PRIVATE LIMITED (SUPREME COURT)**

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The assessee filed a return of income for Assessment Year 2013-2014 declaring the income of Rs 20 lakhs. The Assessing Officer under section 143(3) made on 31.12.2015 disallowed expense A of Rs 15 lakhs, although Supreme Court has held in some other case that expense A is allowable. The Assessing Officer assessed the income at Rs 35 lakhs under section 143(3). The assessee did not file any appeal to Commissioner of Income-tax (Appeals) /

revision application under section 264/ rectification application under section 154 and the time for filing appeal/ revision / rectification have all expired.

Assessing Officer finds income escaping assessment of **Rs 25 lakhs** for Assessment Year **2013-2014** on **31.1.2020** and issues a notice under section 148 to assess the escaped income of **Rs 25 lakh**. Assessee files Return of Income under section 148 as under:

Original assessed income	35 lakhs
Add: Escaped income	25 lakhs
<b>Less: Expense wrongly disallowed under section 143(3)</b>	<b>15 lakhs</b>
	<b><u>45 lakhs</u></b>

### **HELD**

- (a) Since the assessee has not appealed against the original order of the Assessing Officer passes under section 143(3), it has become final. On re-assessment under section 147, the original assessment is not wiped off and the original order does not cease and it remains.
- (b) The assessee cannot seek the reopening of the entire assessment and cannot claim credit in respect of items finally concluded in the original assessment. The assessee cannot claim re-computing of the income or redoing of an assessment and can not be allowed a claim which he either failed to make or which was otherwise rejected at the time of original assessment, which has since acquired finality.
- (c) The assessee cannot re-agitate in the reassessment proceedings, the matter which he had lost during the original assessment proceedings. The re-assessment does not wipe off the original assessment.
- (d) A matter not agitated in the concluded original assessment proceedings cannot be permitted to be agitated in the reassessment proceedings unless it relates to the item sought to be taxed as escaped income. In the reassessment proceedings for bringing to tax items which had escaped assessment, it would be open to the assessee to put forward claims for deduction of any expenditure in respect of that income or the non-taxability of the said income. The reassessment proceedings are for the benefit of the revenue and not for the benefit of the assessee and an assessee cannot be permitted to convert the reassessment proceedings into appeal or revision and seek relief in respect of items rejected earlier or in respect of items not claimed in the assessment proceedings.
- (e) Re-assessment cannot result in reduction of income beyond the income originally assessed. In the present case, the assessee cannot be allowed Expense A of **Rs 15 lakhs** since the issue of expense A has acquired finality.

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### **SUN ENGINEERING PVT. LTD. AND SECTION 152(2)**

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The assessee file return of income for Assessment Year **2015-2016** declaring an income of **Rs 2 Lakhs**. The Assessing Officer made an order under section 143(3) on **31.12.2015** as under:

	Returned Income	2,00,000
Add:	Expense P disallowed inspite of the fact that Supreme Court has held Expense P to be allowable	8,00,000
	Assessed Income	10,00,000

Had the assessee filed an appeal to Commissioner of Income-tax (Appeals) / rectification application under section 154 / Revision application to Commissioner of Income-tax under section 264, then Expense P would have been allowed.

But the assessee did not file any appeal / rectification application/ revision application and the time limits for filing the same have all expired.

On **1.1.2021**, the Assessing Officer finds escaped income for Assessment Year **2015-2016** amounting to:

**Case-I:** Rs. 17,00,000

**Case-II** Rs. 7,00,000

**Case – I:**

Since the assessee has not filed an appeal against expense P, the order of Assessing Officer under section 143(3) has become final. As per Supreme Court in SUN ENGINEERING (P) LTD. the assessee cannot raise the issue of allow/ability of deduction P in 147 proceedings. The Assessing Officer shall reassess the income under section 147 at **Rs 10 Lakhs + Rs 17 Lakhs = Rs 27 Lakhs**. Section 152(2) has no application here.

**Case-II:**

Section 152(2) shall apply here. The assessee proves that even if the income escaping assessment been taken into account, his correct income is **Rs 2 Lakhs + Rs 7 Lakhs = Rs 9 Lakhs**. And he has already been assessed at **Rs 10 Lakhs** under section 143(3) and therefore proceedings under section 147 shall be dropped. The case of SUN ENGINEERING (P) LTD. shall not apply here since Assessing Officer is not making reassessment under section 147. The said case applies if Assessing Officer makes reassessment under section 147.

\*\*\*\*\*



## CHAPTER 14. TIME LIMITS FOR COMPLETION OF ASSESSMENT OR REASSESSMENT

### SECTION 153(1): TIME LIMIT FOR COMPLETION OF ASSESSMENT UNDER SECTION 143(3) OR 144

No order of assessment under section 143(3) or 144 shall be made after the expiry of **12 months** from the end of the relevant Assessment Year.

#### Illustration 1:

For assessment year **2021-2022**, the assessment order under section 143(3)/ 144 can be made up to \_\_\_\_\_. The service of the order under section 143(3)/ 144 may take place after \_\_\_\_\_ but the order must be made (i.e. signed) on or before \_\_\_\_\_.

#### Illustration 2:

For assessment year **2021-2022**, the due date of filing of return was **30.9.2021**. The assessee filed the return on **31.03.2022**. The Assessing Officer issued notice under section 143(2) and the said notice is served on the assessee on **30.9.2022**.

In the above case, the assessment under section 143(3) should be completed on or before \_\_\_\_\_.

#### **PURSHOTAMDAS T. PATEL**

In this case, the Assessing Officer passed assessment order under section 143(3) on **31.3.2023** for Assessment Year **2021-2022**. The said order was served on the assessee on **2.4.2023**. The demand notice under section 156 was prepared on **3.4.2023** and was served on the assessee on **4.4.2023**.

The Court observed that section 153(1) provides that no order of assessment under section 143(3)/144 shall be made after the expiry of 12 months from the end of the relevant Assessment Year. The Court held that "Assessment" is an integrated process involving not only the determination of total income but also the determination of tax. Therefore, unless the total income is determined and tax thereon is also levied, it cannot be said that the process of assessment is complete. The assessment can be said to be complete when income is determined and tax is levied thereon through a notice of demand under section 156. In the present case, since the notice of demand is prepared on **3.4.2023**, the assessment can be said to be completed on **3.4.2023** and is thus time-barred and invalid.

### SECTION 153(2): TIME LIMIT FOR COMPLETION OF ASSESSMENT OR REASSESSMENT UNDER SECTION 147

No order of assessment or reassessment under section 147 shall be made after the expiry of **12 months** from the end of the Financial Year in which notice under section 148 was served on the assessee.

---

**SECTION 153(3): TIME LIMIT FOR COMPLETION OF ASSESSMENT WHERE  
THE ASSESSMENT IS CANCELLED OR SET ASIDE UNDER SECTION 254, 263  
OR 264**

---

Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment in pursuance of an order under section 254 or 263 or 264, setting aside or cancelling an assessment, may be made at anytime before the expiry of **12 months** from the end of the Financial Year in which order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or as the case may be, the order under section 263 or 264 is passed by Principal Commissioner or Commissioner.

**(To be discussed later)**

**KEY NOTES:**

1. W.e.f. 01-06-2001, the CIT (Appeals) cannot cancel/ set-aside the assessment and refer it back to the Assessing Officer for fresh assessment. [Amendment in section 251(1)(a) made by Finance Act, 2001]
2. If by an order under section 254, 263 or 264, the assessment is cancelled/ set-aside and a direction is given to make a fresh assessment then, the Assessing Officer shall make the fresh assessment under the same section under which the original assessment, which is cancelled/ set-aside, was made.
3. For making a fresh assessment to give effect to the order under section 254, 263 or 264, notice under section 143(2)/ 144/ 148 is not required to be issued again as the previous notice issued for making the original assessment is still valid.

**SEC 153(4): INCREASED TIME LIMIT ON REFERENCE TO TPO**

**Where a reference has been made to the Transfer Pricing Officer under section 92CA to determine the arm's length price, the time period for completion of assessment/ reassessment shall be increased by 1 year. (See after Sec 92CA in Transfer Pricing)**

**NOTES:**

1. Where, by an order referred to in section 153(3), any income is excluded from the total income of the assessee for an Assessment Year, then, an assessment of such income for another Assessment Year shall, for the purpose of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.
2. Where, by an order referred to in section 153(3), any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed.
3. The following time periods are to be excluded while computing the period of limitation relating to assessment or reassessment referred to in section 153.
  - (i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be reheard under proviso to section 129. *[Discussed in Chapter of Penalties]*
  - (ii) the period during which the assessment proceeding is stayed by an order or injunction of any court.

- (iii) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of section 10, under clause (i) of the proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification is received by the Assessing Officer;
- (iv) **the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer.** (Added by Finance Act, 2014)
- (v) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 142(2A) and
  - (a) ending with the last date on which assessee is required to furnish a report of audit under section 142(2A); or
  - (b) **where such direction is challenged before a Court, ending with the date on which the order setting aside such direction is received by the Commissioner of Income-tax.** (Amendment by Finance Act, 2013)
- (vi) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under section 158A and ending with the date on which order under sub-section (3) of section 158A is made by him (order of accepting or rejecting the declaration).
- (vii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R. *[Discussed in the Chapter of Advance Rulings]*
- (viii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q. and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R. *[Discussed in the Chapter of Advance Rulings]*
- (ix) **the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is last received by the Commissioner or a period of 1 year, whichever is less.**

**KEY NOTES:**

In all the above cases, where immediately after excluding the above time periods, the period of limitation available to the Assessing Officer for making an assessment or reassessment is less than 60 days, then such remaining period shall be extended to sixty days and the above said periods shall be deemed to be extended accordingly.

\*\*\*\*\*

## CHAPTER 10

### INTERLINKING IN THE CHAPTER OF PGBP

#### Sections where **Manufacturing or Production** is mentioned:

- |    |                       |  |
|----|-----------------------|--|
| 1. | <b>Sec 32(1)(iia)</b> | - Additional Depreciation.                   |
| 2. | <b>Sec 35(2AB)</b>    | - In house Scientific Research.              |
| 3. | <b>Sec 35AD</b>       | - Investment Linked Deductions (3 Business). |
| 4. | <b>Sec 32AD</b>       | - Investment Allowance for 4 States.         |

#### Sections where **Company** is mentioned:

- |    |                      |  |
|----|----------------------|--|
| 1. | <b>Sec 36(1)(ix)</b> | - Expenditure on Promotion of Family Planning. |
| 2. | <b>Sec 35(2AB)</b>   | - In house Scientific Research.                |
| 3. | <b>Sec 35AD</b>      | - Investment Linked Deductions (2 Business).   |
| 4. | <b>Sec 35CCD</b>     | - Expenditure on Notified Skill Development.   |

#### Sections where **Indian Company** is mentioned:

- |    |                 |  |
|----|-----------------|--|
| 1. | <b>Sec 35D</b>  | - Amortisation of Preliminary Expenses.              |
| 2. | <b>Sec 35E</b>  | - Amortisation of Exploration Expenses.              |
| 3. | <b>Sec 35DD</b> | - Amortisation of Amalgamation or Demerger Expenses. |
| 4. | <b>Sec 35AD</b> | - Investment Linked Deductions. (2 Business).        |

#### Sections where **Amortisation** is mentioned:

- |    |                      |                             |
|----|----------------------|-----------------------------|
| 1. | <b>Sec 36(1)(ix)</b> | - 1/5th.                    |
| 2. | <b>Sec 35D</b>       | - 1/5th.                    |
| 3. | <b>Sec 35E</b>       | - 1/10th.                   |
| 4. | <b>Sec 35DD</b>      | - 1/5th.                    |
| 5. | <b>Sec 35DDA</b>     | - 1/5th.                    |
| 6. | <b>Sec 35ABB/ABA</b> | - Over the life of License. |

#### Sections where **deduction** is based on **percentage**:

- |    |                         |   |
|----|-------------------------|---|
| 1. | <b>Sec 33AB</b>         | - 40% PGBP (before <b>33AB</b> & b/f losses).     |
| 2. | <b>Sec 33ABA</b>        | - 20% PGBP (before <b>33ABA</b> & b/f losses).    |
| 3. | <b>Sec 36(1)(viiia)</b> | - 8.5%/5 % of GTI & 10% Aggregate Rural Advances. |

- |    |                        |  |
|----|------------------------|--|
| 4. | <b>Sec 36(1)(viii)</b> | - 20 % of PGBP from 36(1)(viii) Activities OR<br>200% of (Paid up Capital + GR) on last day - SR A/c on 1 <sup>st</sup> day. |
| 5. | <b>Sec 35D</b>         | - Higher of (5% of COP or 5% of CE). Compare with Actual Exp and then whichever is lower.                                    |
| 6. | <b>Sec 32AD</b>        | - 15% of Actual Cost of New P&M.   |

#### Sections where **Lock in** is mentioned:

- |    |                     |   |
|----|---------------------|---|
| 1. | <b>Sec 32AD</b>     | - 5 years from the date of Installation.  |
| 2. | <b>Sec 33AB/ABA</b> | - 8 years from the end of the PY in which asset was Purchased.  |
| 3. | <b>Sec 35AD</b>     | - Do not use for Non-Specified Purpose for a period of 8 Years from the beginning of the PY in which asset was installed. |

#### Sections where **New Plant & Machinery** is mentioned:

- |    |                       |  |
|----|-----------------------|--|
| 1. | <b>Sec 32(1)(iia)</b> | - Additional Depreciation.                     |
| 2. | <b>Sec 32AD</b>       | - Investment Allowance for 4 States.           |
| 3. | <b>Sec 35AD</b>       | - Investment Linked Deductions (2 Exceptions). |

ALL THE BEST

## CHAPTER 11

### TAXATION OF VARIOUS ENTITIES

#### Taxation of Cooperative Societies

##### Tax Rates:

Up to Rs. 10,000	10% of Total income.
Between Rs. 10,000 to Rs. 20,000	1000 + 20% of Excess.
Above Rs. 20,000	3,000 + 30% of Excess.

→ Note: If TI > Rs. 1 cr, then Surcharge @ 12%. Health & Education cess @ 4 %.

→ Note: No AMT if Cooperative Societies Income is Deductible u/s 80P.

#### Sec 80P:- Deduction in respect of Income of cooperative Societies :

##### (A) Specified Deductions (100% deductible)

##### (I) Profits of following specified Activities:-

(i) Carrying on business of banking or providing **credit facilities to its members**.

Note:- \* However, exemption **not** available to **Co-operative Banks**.

\* But exemption is available in respect of primary agricultural society or a primary co-operative agricultural and rural development bank.

(ii) A **cottage** industry

(iii) **Marketing** of Agriculture produce **grown by its members**.

(iv) **Purchase** of agriculture implements, seeds, livestock or other articles intended for agriculture for the purpose of **supplying its members**.

(v) Processing **without aid of power** of agriculture produce of its members.

(vi) Collective **disposal of Labour** of its members.

(vii) **Fishing** or allied activities.

##### (II) Profits of Certain Primary Cooperative Society:-

A co-operative society engaged is **supplying** milk, oil seeds, fruits or vegetables **grown** or raised by its **members**.

To →

(1) Federal Co. Op Society.  
(2) Govt. or Local Authority.  
(3) Govt. Co. or statutory Corp.  
All of the above should be engaged

		in <b>supplying</b> milk, oil seeds, fruits or vegetables <b>to public</b> .
--	--	--

(III) Income from **investment** with Co-operative Societies → 100% **Interest / Dividend** is deductible.

(IV) Income from **letting of godowns** or warehouse for Agriculture Purpose → 100% of **Rental** Income is deductible.

(B) **General Deduction**

- |   |   |
|---|---|
| (i) If it is a <b>Consumer co-operative</b> society- Rs. 1,00,000 Flat. | (ii) In case of <b>any other</b> Society - Rs. 50,000 Flat. |
|---|---|

### Taxation of Film Producer / Film Distributor

	Quantum of deduction	
1. Taxation of Film producer/ <b>Distributor</b> Rule 9A/ <b>Rule 9B</b>	Films released on OR before 1st Jan 2021	Films released after 1st Jan 2021
(a) Film producer/ <b>Distributor</b> <b>sells all</b> rights of exhibition of the film in P.Y.	<b>Entire</b> cost of production/ <b>Acquisition</b>	<b>Entire</b> cost of production/ <b>Acquisition</b>
(b) Film producer/ <b>Distributor</b> himself exhibits the film in all or some areas.		(i) <b>Cost</b> of production/ <b>Acquisition</b>  OR (ii) <b>Amount realised</b> by exhibiting the film & sale of rights of exhibition; <b>whichever is less.</b>
(c) Film producer/ <b>Distributor</b> sells the rights of exhibition in respect of some areas.	<b>Entire</b> cost of production/ <b>Acquisition</b>	
(d) Film producer/ <b>Distributor</b> himself exhibits the film in certain areas and sells the rights of exhibition in respect of all or some of remaining areas.		



## → Note:

- a) If any portion is **met by govt**, then it shall be **reduced** from the cost of production.
- b) Cost of Production shall **not include** the following:
1. Expenditure incurred for preparation of **positive prints**.
  2. Expenditure incurred in connection with the **advertisement** of the film.
- These 2 expenses will be **allowed as revenue expense** in the year of **release**.
- c) It is clarified that **Rule 9A** does **not apply to abandoned feature films**. The cost of production of an abandoned feature film is to be **treated as revenue expenditure** and allowed as per the provisions of **Sec 37**.

## Taxation of Mutual concerns

The basic principle of mutuality is **that no person can trade with himself** or make income out of it. These associations arise when group of persons associate together with a common object and contribute fund for achieving that object.

## How Mutual concerns are taxed?

How Mutual concerns are taxed?					
Others (Social Clubs etc)			Trade / professional Association (Sec 44A)		
General Receipts from <b>member</b>	Specific Sr. to <b>member</b>	Specific services to <b>outsiders</b>			
Exempt		Taxable			
			General Receipts(x) from members	Receipts from <b>members/ outsiders</b> for specific	
			(-) General Expense(x)	Service	xxx



			Surplus / Deficit	(-) Exp.	(xx)
		Exempt	Can Be (xx)	PGBP	xxx
			***Set off xxx		

\*\*\* This deficit can be set off against the business income or any other income subject to 50% of total income. (First give the effect of B/F Loss & UAD and then set off the deficiency u/s 44A) (Refer Illustration on Page\_\_\_\_\_)

### Banikpur Club Ltd. (SC)

It was held by SC that in this case sale of drinks, refreshments, etc to members does not involve any commerciality as these are privileges, conveniences, etc which members are entitled from clubs. The objective of club was not profit motive, but it was to give services to its members. This transaction is not subject to tax.

### Sind Co-operative housing society (Bombay H.C)

H.C. held any amount received as transfer fees from incoming members or outgoing members are not subject to tax as these amounts are used for maintenance of property of society only.

### Taxation of Firm (including LLP)

#### Sec 184: - Assessment as Firm

#### 2 Conditions

Evidenced by an Instrument/  
Deed

AND

Individual share is specified in  
deed

#### Other conditions

\* A certified Copy of deed shall accompany the Return of Income for first time.

\* Deed Should be certified by all the partners, not being minor.

\* If there is change then furnish  
in constitution

Revised instrument of partnership  
along with ROI

Deduction of Remuneration, Salary, Bonus, Commission:-  
Interest/ Remuneration shall be not be allowed in following cases

Sec 184(5)	Sec 185
If firms <b>fails</b> to comply with <b>Sec 144</b> (Best Judgement Assessment)	If the firm does <b>not comply</b> with technical requirements of <b>Sec 184</b> .

- \* **Note:-** However above expenditures **will not be taxable** in the hands of the **partner**.

### Sec 187:- Change in constitution of Firm

At the time of making assessment <b>u/s 143, 144, 147 or 153A</b>	It is found that a <b>change</b> has <b>occurred</b> .	Then <b>assessment</b> shall be made on <b>Reconstituted Firm</b> .
---	--	---

- \* However, as per **Sec 188A** all the partners will be jointly and severally liable.

### Sec 188:- Succession of one firm by another firm

- \* If the case is not covered by **Sec 187**, then **separate assessment** for predecessor separate for successor.
- \* Succession occurs when **all the partners change**.

### Sec 188A:- Joint & several liability of partners for Tax payable by Firm:-

- **Every person** who was, **during the P.Y. a partner**, a legal representative of such person who is deceased, shall be jointly and severally liable along with the firm for any tax, penalty or other sum payable.

### Sec 189:- Firm dissolved or business discontinued

- \* **Every person** who was at the **time of dissolution**, a partner and a legal representative of such person, shall be jointly or severally liable.
- \* Tax Rate of Firm = Flat 30% (+) (12% Surcharge if TI > Rs. 1 Cr) (+) 4 % Health & Education cess. LTCG taxed **u/s 112**, STCG taxed **u/s 111A**, LTCG referred **u/s 112A** are taxed at their respective rates.

## Sec 40(b) :- Remuneration and Interest to Partners.

Remuneration	Interest
(1) To <b>working partners</b> .	(1) To Any partner
(2) To <b>Individual only</b> .	(2) To Any partner
(3) Should be <b>authorized</b> by Deed.	(3) Should be authorized by Deed
(4) In the partnership Deed:- specify <b>amount</b> OR lays down the <b>manner</b>	(4) <b>Rate of Interest</b> should be specified in the deed.
(5) Should <b>not be retrospective</b> .	(5) Should <b>not be retrospective</b> .

## Circular No. 739 (By CBDT) (1996):-

The CBDT has clarified that remuneration shall be admissible only if the deed **either specifies the amount or lays down the manner of quantifying the same**. If the assessee does not fulfils the above conditions, then A.O. is justified in disallowing the remuneration.

## Novel Distributing Enterprise (2001) (Kerela HC)

It was held that assessee has to **mention** the rate of interest of **both current and capital A/c**. Such impugned (disputed) interest on **current A/c** will be **disallowed** as it is **not specified** in the deed, notwithstanding the fact, the partners have included in their individual returns.

\* **Sec 40(b) :- Interest can't exceed 12% p.a. (Simple Interest)**

\* **Sec 40(b) :- Maximum Permissible Remuneration:-**

(a) In case Book profit is <b>negative</b>	Rs. 1,50,000 flat
(b) In case Book profit is <b>upto Rs. 3,00,000</b>	Rs. 150,000 OR
	90% of Book profit
	(whichever is more)
(c) <b>On Balance</b> book profits	60% of Book profit

Explanation to **Sec 40(b)**: Meaning of Book Profits: -

- (1) **Net profit** as per profit and loss A/c.
- (2) Give effect from **Sec 28 to 44D**.
- (3) **Add remuneration** if debited to P & L A/c.

## Steps to be followed during questions:

**Step 1:** Find out Book Profit. (Ignore B/F Losses & CH VIA here)

**Step 2:** Find out Maximum Remuneration Allowable.

**Step 3:** Find out Total Income & Tax Liability. (Reduce B/F Losses & CH VIA here)

Explanation to **Sec 40(b)**

Explanation 1	Explanation 2
Where an individual is a partner in <b>representative capacity</b> , then interest paid on individual capacity will <b>not be covered by Sec 40(b)</b>	Where an individual is a partner in a firm in <b>personal capacity</b> , then <b>Sec 40(b)</b> will <b>not</b> be applicable for any amount <b>paid to HUF</b> .

**Great City Manufacturing Co. (Allahabad H.C.)**

It was held that disallowances covered **u/s 40A(2)** **can't be** made to cases **covered under Sec 40(b)**. **Sec 40(b)** allows remuneration, the moment the amount or the manner in which the remuneration is to be quantified is mentioned. Remuneration paid to working partner within the limits specified **u/s 40(b)** **can't** be disallowed by invoking **Sec 40A(2)**.

**Sec 10(2A) - Circular No. 8/2014 → 31.03.2014.**

It is clarified that **income of the firm whether taxed in the hands of the firm or exempt**, under no circumstances it will be taxed in the hands of the partner.

→ Whether **remuneration and interest** are allowed for Assessee's who are covered under **presumptive income (Sec 44AD/44ADA/44AE)**?

Ans: No for **Sec 44AD/ADA**. But for **Sec 44AE** it is allowed.

**Sec 78(1):- C/F and Set off of Losses in case of Change in Constitution**

Where a change in constitution of firm taxes place on account of **retirement** or **death** of a partner, the firm shall not c/f and set off the following b/f losses:-

Shares of Retired / Deceased partner in b/f losses	xx
(-) Share in C.Y. profits	(xx)
Can't be c/f by the firm	xx

**Note: Sec 78(1) is not applicable if the partner does not die/retire but there is only is a change in PSR.**

Remuneration paid by HUF to Karta or any member of HUF:-

**Jugal kishore Baldeo Sahai v/s CIT**

(a) Paid under valid & <b>bonafide Agreement.</b>	(b) In the interest of & expedient for the <b>business</b> of family.	(c) Reasonable & <b>not excessive.</b>
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**Taxation of Political Parties****Exemption u/s Sec 13A:**

Following incomes shall **not be included** in total income:

Income from **HP/CG/IFOS/ Voluntary contributions** (See below for conditions)

**Conditions for Voluntary Contributions**

(a) Keeps & maintains <b>BOA</b> & other documents as would enable A.O. to compute income.	(b) If V/C <b>per person exceed Rs.20,000</b> then keep record of name & address of donor.	(c) <b>Audit</b> by Accountant.
--	--	---------------------------------

**Conditions:**

- To claim exemption **u/s 13A**, a political party is supposed to **furnish return u/s 139(4B) on or before the due date of furnishing return u/s 139(1).** {Refer Page\_\_\_\_\_ for **Sec 139(4B)**}



2. **No donation of Rs. 2,000 or more** is received otherwise than by A/c payee crossed cheque/ A/c payee bank draft/ ECS/ Electoral Bonds (Refer Below)/ such other electronic mode as may be prescribed.

Further, in order to address the concern of anonymity of the donors, **Sec 13A** provide that the political parties **shall not be required to furnish the name and address of the donors who contribute by way of electoral bond.**

### Sec 13B: Taxation of Electoral Trust

- (1) Any voluntary donation received by such trust would be exempt **u/s 13B**, if **95% of aggregate donation** received during the PY **along with surplus** if any brought forward from earlier years **is distributed** to a registered political party.
- (2) If an ET **earns** an income in form of **interest** or **any other income** by investing in fixed deposit or other securities then such interest / other income will **not be exempt u/s 13B**.
- (3) Donations given to such trust are eligible for **deduction in the hands of the donor u/s 80GGC**.

### Taxation of AOP / BOI

#### Sec 167B

Where share of the members are known & determinable	Where shares of the members are unknown and undeterminable.
---	---

#### Where shares of the members are known and determinate:

(1)	(2)	(3)
<b>None</b> of the members have <b>*TI &gt; BEL</b> <b>AND</b> <b>None</b> of the members are	<b>One</b> or more members have <b>*TI &gt; BEL</b> . <b>AND</b> <b>None</b> of members are assessable at a rate <b>higher than M.M.R</b>	<b>One</b> or more members are assessable at <b>rate higher than M.M.R</b> Tax on AOP / BOI shall be <b>aggregate of:</b> (i) Tax at <b>such higher rate</b> on

assessable at a rate <b>higher than MMR.</b>  Tax AOP / BOI at rates applicable to <b>Individual.</b> Here make statement of allocation as per <b>Sec</b> <b>67A</b> for members	Tax <b>entire income</b> of AOP / BOI <b>at MMR</b>  <b>Share of Income from</b> <b>AOP is Exempt</b> as per <b>Sec 86.</b> <b>(NO MAT)</b>	such member share & (ii) Tax at <b>MMR</b> on balance income  <b>Share of Income from AOP is</b> <b>Exempt</b> as per <b>Sec 86.</b> <b>(NO MAT)</b>
--	---	--

## Where share are indeterminate &amp; unknown

Where <b>none</b> of members are assessable at a rate <b>higher than MMR</b>  Tax Entire AOP <b>at MMR</b> Share of Income from AOP is Exempt as per <b>sec 86.</b>	Where <b>any</b> of the members are assessable at a <b>rate higher than MMR</b>  Tax entire AOP at <b>such higher rate</b> Share of Income from AOP is Exempt as per <b>sec 86.</b>
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## → Note:

- As per **Sec 2(29C)**, MMR i.e. maximum marginal rate means the highest of the slab rates applicable to an individual including surcharge & cess. ∴ **MMR = 42.744%**. {For **Sec 115TD** MMR is 34.944% i.e. 30% + 12% + 4%}
- As per **Sec 40(ba)**, **No deduction of remuneration and interest** shall be allowed to AOP/BOI.
- \*Total Income includes all income **other than share of income** from AOP or BOI.
- No MAT** shall be applicable on that share of Income from AOP/BOI, on which AOP/BOI has paid tax at MMR. {Refer Chapter of MAT}

ALL THE BEST

## CHAPTER 12

### FILING OF RETURNS

Previous year 2020-21				
↓	↓	↓	↓	↓
<b>139(1)</b>	<b>139(3)</b> Loss	<b>139(4)</b> Belated	<b>139(5)</b> Revised	<b>139(9)</b> Defective

Scrutiny Notice	Order	Remedy to Assessee		
↓	↓	↓	↓	↓
<b>u/s 143(2)</b>	<b>u/s 143(3)</b>	CIT(A)	Rectify	Revision
↓	↓	<b>246A</b>	<b>154</b>	<b>264</b>
Commencement of proceedings	Completion of proceedings			
└──────────┘				
<b>"Pendency of Proceedings"</b>				

### Filing of Return of Income [Sec 139(1)]

#### Who is Obligated to File ROI?

- (a) A Company or a Firm **(Always)**.
- (b) Any other Person, if **GTI > B.E.L.**
- ➔ **Note: GTI = Total Income before deductions under CH-VIA and before exemptions u/s 54 to 54GB.**

#### 4<sup>th</sup> & 5<sup>th</sup> Proviso to Sec 139(1):

**R & OR Individual (+) Beneficial Owner or Beneficiary (+) any asset** (including Financial Interest in any entity) located **outside India** or signing authority of any account located outside India is also supposed to **file return, even if the GTI is lower than BEL.**



## Due Dates u/s 139(1)

31.10.2020	30.11.2020	31.07.2020
(i) <b>Company</b>	Assessee covered	Any other case
(ii) Other persons whose accounts are audited (any law)	by <b>Transfer Pricing</b>	
(iii) <b>Working partners</b> of a firm whose A/C's are audited		

## Amendment made by Finance Act (No.2) 2019

1. If assessee has **deposited** an amount or aggregate of the amounts **exceeding one crore rupees** in one or more **current** account maintained with a banking company or a co-operative bank; or
2. has incurred **expenditure** of an amount or aggregate of the amounts **exceeding two lakh rupees** for **himself or any other** person for **travel to a foreign country**; or
3. has incurred **expenditure** of an amount or aggregate of the amounts **exceeding one lakh rupees** towards consumption of **electricity**.

## Consequences of not Filing the return within the due date u/s 139(1):

1. PGBP & CG **Losses are not** allowed to Carry Forward.
2. Interest **u/s 234A**.
3. Fee **u/s 234F**.
4. Best Judgement Assessment **u/s 144**.
5. Notice **u/s 142(1)(i)** requiring assessee to file ROI.
6. Exemptions **u/s 11 & 13A** shall not be allowed.
7. As per **Sec 80AC** no profit linked deductions shall be allowed.

It was held in the case of **Regen Powertech (P) Ltd** that the assessee could not be blamed for the delay in carrying out its audit, as it was beyond its control. Since there was some misunderstanding between the erstwhile auditor and the assessee, the return of income could not be presented before the due date.

**Sec 80AC:** No deduction for Profit Linked deductions:

**No deduction** u/s 80-IA / IB / IAB /IAC/ IC / ID / IE / IBA / JJA /JJAA / P / PA / QQB / RRB/LA, **unless ROI** is furnished on or before due date u/s 139(1).

**Sec 234F:** Fee for late filing of Income Tax Return :

- Rs. 5,000** if the return is filed after due date but till **31<sup>st</sup> Dec of the AY.**
- Rs. 10,000** in any other case.
- In case where the **TI < 5,00,000**, then the fee shall **not exceed Rs. 1,000.**
- Sec 140A** also provide that while paying SA Tax, such fee shall be considered.
- Sec 143(1)** also provide that while processing the return, such fee shall be considered.

**Returns by Special Assessee's:**

Sec	Particulars	Conditions to file	Due Date	Penalty
139(4A)	C/R <b>Trust</b>	If TI before exemption u/s 11 & 12 > B.E.L.	31.10	272A,i.e. Rs 100 per day & 234F
139(4B)	<b>Political</b> party	If TI before exemption u/s 13A > B.E.L.	31.10	234F
139(4C)	Certain <b>Special Institution</b> whose income is exempt u/s 10.	If TI before exemption u/s 10 > BEL {Also Refer Proviso to Sec 143(3)}	31.10	272A,i.e. Rs 100 per day & 234F
139(4D)	University, college, etc u/s 35(1) (ii),(iii)	No Limit {Also Refer Proviso to Sec 143(3)}	31.10	234F
139(4E)	<b>Business Trust</b>	No Limit	31.10	234F
139(4F)	<b>Investment Fund</b>	No Limit	31.10	234F

### Sec 139(3) r.w. Sec 80 :- Loss Return

If loss under head :-

PGBP  
OR  
Capital Gains

is to  
be c/f

Then file ROI within T/L u/s 139(1)

### → Key Notes:-

- (1) Sec 80/139(3) does **not prohibit set off** of losses of P.Y. as well as C.Y.
- (2) Losses of **H.P.** can be **c/f** even if, return is filed late, as it is covered by **sec 71B**.
- (3) **U.A.D.** can be **c/f** even if return is filed late, as it covered by **Sec 32(2)**. Further, it was held that UAD can be c/f even if return is not filed.
- (4) The **restriction is not on b/f** losses of earlier years.
- (5) Losses of PGBP or CG u/s 72, 73, 73A, 74 or 74A are covered u/s 139(3).

### Can delay in Filing ROI be condoned to **C/F Losses/ Refund** cases?

1. Make an **application** for condonation of delay in filing ROI claiming refund or losses:
  - a) If the claim is not more than **10L** for any 1 year, then application can be made to **CIT**.
  - b) If the claim exceeds 10L but not more than **50L** for any 1 year then application shall be made to **Chief CIT**.
  - c) If **exceeds 50L**, the application shall be made to the Board (**CBDT**).
2. Application shall **not be considered after 6** years from the end of R.A.Y.
3. CIT will direct the AO to make necessary enquiries.
4. **No interest** shall be granted on belated refunds.

### Sec 139(4): Belated Return

If ROI is not filed before the time limit under **Sec 139(1)** then he may furnish ROI:-

Before the **expiry of R.A.Y.**

OR

Before **completion of Assessment**

Whichever is **earlier**

- (1) "Assessment" includes Best Judgement u/s 144.
- (2) Completion of Assessment = **Date of Passing the Order** & not date of service of order.

**Sec 139(5):- Revised Return**

If a person has filed ROI u/s 139(1) or 139(4) and discovers any **omission or wrong** statement, then he may furnish a revised return: -

↓	OR	↓
<b>Before</b> Expiry of the <b>R.A.Y.</b>	OR	<b>Before</b> completion of <b>Assessment</b>
Whichever is <b>earlier</b> .		

**→ Key Notes:-**

- (1) A return can be **revised for 'n' number** of times, subject to time limit u/s 139(5).
- (2) A **Loss Return** filed u/s 139(3) can be **revised**.
- (3) A return can be **revised** even **after the scrutiny notice** u/s 143(2).

**Sec 139(9):- Defective Return**

If <b>A.O.</b> <b>considers</b> →	That Return is "defective"	then he may intimate the defect to assessee
		<b>AND</b>
		give him <b>O.O.B.H.</b> to rectify the defect within 15 days. A.O. may extend the T/L on application by Assessee.

- Note: If assessee does not revert back within 15 days, then ROI shall be "Void ab-initio".**

**Note:**

For Discussion on Income Tax Return Preparer and Signing or Verification of Income Tax Return Refer Page\_\_\_\_\_.

**ALL THE BEST**

## CHAPTER 13

### ASSESSMENT PROCEDURES

#### Sec 142(1)(i): Notice for Return Filing

Assessee	(+) <b>Not filed</b> ROI till - <b>u/s 139(1)</b>	(+) The A.O may <b>issue a notice</b> to file ROI	(+) <b>T/L</b> Mentioned in such <b>Notice</b> .
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#### → Key Notes:-

1. **To make** Best Judgement Assessment **u/s 144**, it is **not mandatory** to issue such notice.
2. This return can **neither** be **revised** **u/s 139(5)** **nor belatedly** filed **u/s 139(4)**.

#### Sec 142(1)(ii): Preliminary Enquiry:

For the purpose of making assessment

A.O. by issuing this notice can require the assessee to furnish:

**(Maximum for 3yrs prior to P.Y.)**

Accounts	Documents	Various other Information	A statement of A & L
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#### → Key Notes:-

By Issuing Notice **u/s 142(1)(ii)** alone, the **A.O. can't make** an assessment.

Following notice must be issued to initiate an assessment proceedings:

For making an assessment	It is mandatory to issue
Under sec <b>143(3)</b>	Notice under sec <b>143(2)</b>
Under sec <b>144</b>	Show Cause Notice under sec <b>144</b> [except in one case as referred to in <b>Sec 144</b> ]
Under sec <b>147</b>	Notice under sec <b>148</b>
Under sec <b>153A</b>	Notice under sec <b>153A</b>

**Sec 142(2A):- Special Audit**

If at "Any stage of proceedings" before A.O.,

He is "of the opinion" that having regard to:-

<p>(1) Nature &amp; <b>complexity</b> of A/c's (OR)</p> <p>(2) <b>Volume</b> of A/c's (OR)</p> <p>(3) Doubts about <b>correctness</b> of A/c's (OR)</p> <p>(4) <b>Multiplicity</b> of transactions (OR)</p> <p>(5) <b>Specialized</b> Nature of Business.</p>	AND	<p>Having regard to the <b>Interest of Revenue</b>, it is necessary to get Accounts Audited.</p>
---	-----	--

Then he **may direct the Assessee** to get the Account's Audited after taking approval

(+)

Give him **O.O.B.H.**

➔ **Key Notes:-**

- (1) **Pendency** of proceedings before A.O. is "**Sine - Qua-Non**" (Absolutely Necessary).
- (2) **O.O.B.H.** must be given to Assessee **before** making a **direction u/s 142(2A)**.
- (3) If **sec 142(2A)** is initiated **without** giving a reasonable **opportunity** to the Assessee, then the assessee may **file a writ petition** to H.C. & if the H.C. is satisfied with the Assessee, then it may Quash such direction.
- (4) The direction is issued with **previous approval of chief commissioner** or commissioner (+) Audit done by C.A. (+) Expenses will be borne by C.G.
- (5) What is the **time Limit** to get BOA Special Audit?  
It must be done within the time **specified in the direction**. However, this time can be **extended by A.O, suo-moto** or on an **application** by an assessee, but in no case the time limit allowed earlier along with extended time should **not exceed 180** days from date of receipt of direction by assessee.
- (6) If A.O. **wants to use** the material gathered from special Audit, then he has to give **O.O.B.H.** to assessee before he uses such material for such assessment (**other than sec 144**). But to make assessment **u/s 144** he need **not give O.O.B.H.**



## Sec 142A: Valuation of Asset by Valuation Officer.

A.O. for the purpose  
of **Assessment** or  
Reassessment

Makes **Reference** to  
Valuation officer

For Valuing Any  
Asset, property or  
Investment.

Whether or not  
he is **satisfied** about  
the correctness or  
**completeness** of A/cs of Assessee.

F.A.2014.

## How the valuation officer will value the Asset?

(1) After **taking into account** such  
**evidence** as the Assessee may produce  
and any other evidence gathered in his  
possession (+) **O.O.B.H.**

(2) If the Assessee **doesn't co-  
operate** then, he will value  
based on **Best of his  
judgement.**

## Report made by valuation officer

Submit to

Assessing officer

Assessee.

## What is the time limit for sending this report?

**Within 6 months** from the end of the month in which reference was made by A.O.

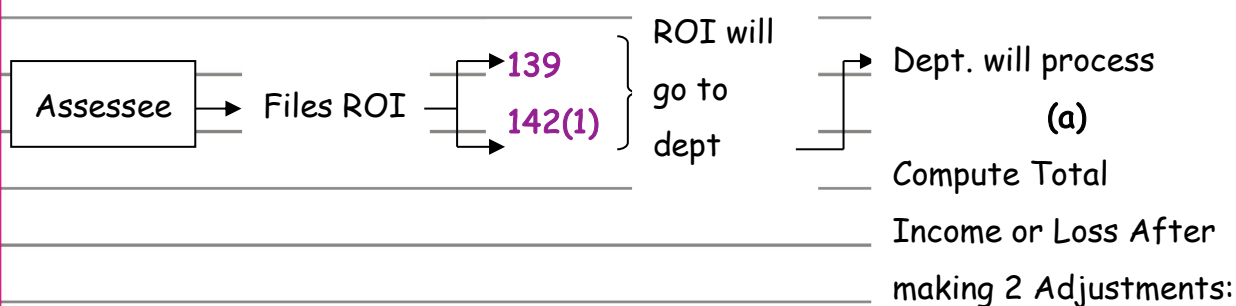
A.O

On Receipt of Report from

Valuation officer

Shall make **Assessment**  
based on such report after giving **O.O.B.H.**

## Sec 143(1) :- Scheme of Processing Returns



- (1) A claim on the basis of an entry in the return (i) Any <sup>TM</sup> **Arithmetical Error** inconsistent with another entry. (ii) "An **incorrect claim** if such incorrect claim is apparent from info in return."
- (2) Information required to **substantiate entry** has not been furnished.
- (3) Deductions **exceeds** Statutory **Limits**

Following adjustments were added by Finance Act, 2016:

1. **Disallowance of loss** claimed, if **return** for the year for which loss has been claimed was **furnished beyond** the due date specified in **Sec 139(1)**.
2. **Disallowance of expenditure** indicated in **tax audit report** but not considered in the Return of Income.
3. **Disallowance** of deduction claimed u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if the return has been **filed beyond** the due date specified in **sec 139(1)**.

However, **no adjustment** will be made without intimating the assessee about such adjustment in writing or in electronic mode and giving him a **time of 30 days to respond**. The adjustment will be made only after considering the response received or after the lapse of 30 days in case no response is received.



## Time limit for "sending" Intimation u/s 143(1)

Within 1 year from end of F.Y. in which return is made only in following cases:-

(1) Where tax as or interest is found <b>payable</b> after making adjustment	OR (2) Where tax or interest is found <b>refundable</b> after making Adjustment.	OR (3) After making adjustment it results in <b>increase / decrease of Loss</b> even though no change in tax.
--	--	---

→ **Note:-** It is mandatory to send intimation only in the above 3 cases. In any other case **Acknowledgement** of return will be **deemed intimation**.

## Can Assessee file an appeal / Revision against Intimation?

Against an Intimation an assessee can go for CIT(A) or Rectification, but **Revision** by CIT u/s 264 is **not possible**. {See Later after Appeal & Revision}

## Can Assessee revise a return after receipt of intimation?

**Yes**, it can be revised subject to conditions to **Sec 139(5)**.

**Sec 143(2): Scrutiny Notice:**

Where a return is filed u/s 139 or 142(1), then A.O. or Prescribed Authority shall **serve a notice** to the assessee for scrutiny. **Prescribed Authority = ITA not below the rank of ITO.**

Time Limit= It should be **served within 6 months** from the end of F.Y in which ROI was furnished.

**Sec 143(2) linked with Sec 292BB:**

Where an assessee **has cooperated** in any inquiry, then it shall be **deemed** that any **notice** which is required to be served upon him, has been duly **served on time** and he shall be **precluded from taking any objection** in proceeding under this ACT that, notice was not served or not served on time or served in an improper manner.

However, if the assessee has **raised such objection before the completion** of such assessment, then assessment **cannot be conducted**.

**Note:**

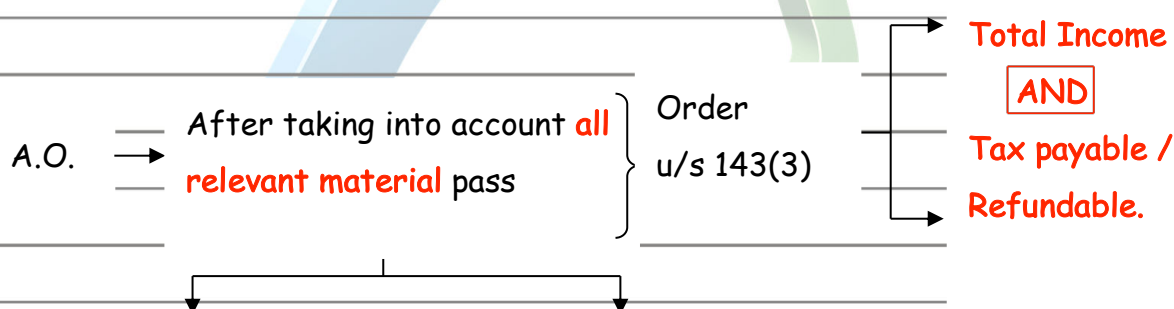
The Supreme Court held in the case of **Laxman Das Khandelwal** that non-issuance of notice under **sec 143(2)** is not a curable defect under **sec 292BB** inspite of participation by the assessee in assessment proceedings.

### Is processing a return always mandatory?

Processing of Return is **mandatory** even in cases where notice is issued **u/s 143(2)**.

However, in case of **recovery** of revenue in **doubtful cases**, a new **Sec 241A** is inserted which provides that where any **refund is due u/s 143(1)**, then the AO may **withhold such refund** till the date of **assessment** if he is of the opinion that grant of refund may **adversely affect the recovery** of revenue. Then he may for **reasons recorded** in writing and with **prior approval** of PCIT or CIT withhold the refund.

### Sec 143(3): Scrutiny / Regular Assessment



Assessee	3 <sup>rd</sup> party
(1) ROI	(1) Special Audit Report {142(2A)}
(2) Material gathered u/s 143(2)	(2) Valuation Report {142A}
	(3) SFT {285A}
	(4) Survey {133A}
	(5) Summons {131} etc

**1<sup>st</sup> and 2<sup>nd</sup> proviso to Sec 143(3)**

If A.O. wants to disallow an exemption u/s 10(21), 10(22B), 10(23A), 10(23B), 10(23C)(iv)(v)(vi)(via) of certain institution or specified institution specified u/s 35(1)(ii)/(iii), then **A.O must intimate** the violation of conditions by such institutions to CG./prescribed Authority. Then **CG/PA will rescind** the notification & withdraw the approval & then **only A.O. can disallow** such exemption.

The **A.O suo motu cannot disallow** the exemptions without intimating CG/PA.

**3<sup>rd</sup> Proviso to Sec 143 (3)**

A.O. will **disallow** exemption u/s 11 & 12 or 10(23C), if **C/R exceeds 20%** of total receipts. This **disallowance** can be made **irrespective of cancellation** of registration by CIT u/s 12AA.

Here AO can suo motu disallow. {Refer discussion of Trust\_\_\_\_\_}

**→ Key notes:-**

- (1) Assessment u/s 143(3) can't be made without ROI & without scrutiny Notice.
- (2) It was held in the case of "**Goetze India Ltd (SC)**" that a **fresh claim** can be made before A.O in the Assessment proceedings **only through a Revised Return** & not through the letter. The A.O. can't entertain any new claim merely on the basis of letter.

**Amendment made by Finance Act 2018**

A new scheme for the purpose of making assessment has been introduced for greater transparency & accountability in the following manner:

1. by eliminating interaction between AO & assessee.
2. by optimal utilization of resources.
3. by introduction of team-based assessment.

For this purpose, new **Sec 143(3A) & 143(3B)** are introduced through which the government will notify the scheme for Regular & **BJA**. {Refer Book -2}

**Sec 144:- Best Judgement Assessment**If any Assessee **FAILS**:

(a) To furnish ROI within <b>139(1)</b> & has not furnished the ROI <b>u/s 139(4)</b> upto the date of SCN <b>u/s 144</b> .	(b) To comply <b>Sec 142(1)</b>	(c) To comply <b>Sec 142(2A)</b>	(d) To comply <b>Sec 143(2)</b>
SCN (Y)	SCN (N)	SCN (Y)	SCN (Y)
Then, A.O. After taking into account <b>all relevant material</b> .	→		He will make Best Judgement and determine <b>Tax Payable</b> .

(e) As per **Sec 145(3)**, if an assessee **violates 145(1) / (2)**, then AO may **initiate BJA u/s 144**. As per **145(1)**, a PGBP or IFOS assessee can maintain BOA on cash or mercantile basis regularly followed by assessee. As per **145(2)**, an assessee following mercantile system shall follow the ICDS.

**→ Key Notes:**

- **No refund** can be granted **u/s 144**. Further A.O. can't assess the income below the returned income and loss higher than Returned Loss.
- **Sec 144** must be made on **scientific basis and not adhoc**.
- The A.O. must specify the basis of computation of income **u/s 144**. The order **u/s 144** should be a **SPEAKING ORDER**.

**Sec 144A: Powers of the Joint Commissioner to issue directions in certain cases**

1. The Directions can be issued only if the **case is pending** in an assessment/ reassessment.
2. The Directions can be issued **by the JC to the AC/ DC/ ITO**, i.e. AO.
3. The Directions can be in **favour** of assessee or can be **against** the assessee.
4. **No appeal** can be filed against the Directions. If the Directions issued are prejudicial to the assessee then AC/ DC/ ITO will disallow the deduction or tax the receipt, in accordance with Directions of JC under **Sec 144A**. The assessee **can file an appeal** to CIT (Appeal) against the assessment **order of DC/ AC/ ITO**.

**ALL THE BEST**

## CHAPTER 14

### INCOME ESCAPING ASSESSMENT

**Sec 147:** Income Escaping Assessment.

If **Assessing officer**

(+)

has **Reason to believe**

(+)

Income has **escaped assessment**

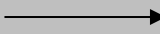
(+)

Subject to **Sec 148 to sec 153**

(+)

Assess or Reassess **"Such Income"** and  
**also** any other income subsequently  
 noticed during assessment proceeding.

#### Doctrine of Partial Merger

<p>A.O. order <b>u/s 143(3)</b>          Exp. A - Allowed          Exp. B - Allowed          Exp. C - Allowed          Exp. D - Disallowed.</p>		<p><b>Appeal</b> to CIT (A) or Revision <b>u/s 264</b> by          CIT made <b>on Exp D</b>.          CIT(A) or CIT allowed the deduction of          Exp. D.</p>
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As per the concept of "Partial merger" **part of A.O's order get merged with the order of CIT (A) or CIT**. As per this concept **A.O. can re-open** assessment **u/s 147** for Exp **A, B or C but not for Exp D** as it was a subject matter of Appeal / Revision. {Doctrine of Partial Merger will come later in **Sec 154 & 263** whereas in **Sec 264** Doctrine of Complete Merger will come.}



Income Escaped	
Assessee's <b>Default</b>	Subsequent <b>Development In Law</b>
↓	↓
Assessment <b>u/s 147</b>	Retrospective Amendment/SC Judgement
(+)	(+)
Tax + Interest + Penalty can be imposed.	Assessment <b>u/s 147</b> . Tax + No Interest & penalty.

### What amounts to **Reason to BELIEVE?**

1. Matters arising from **CAG Audit Report** can be considered as **RTB**. However personal **opinion of CAG cannot** be considered as RTB.
2. **Sec 147 cannot be invoked based on rumours**, gossips, as these does not amount to RTB.
3. It was held by SC in the case of **Kelvinator of India Ltd** that **sec 147 cannot** be invoked merely on the basis of **change in personal opinion**.
4. Following **constitutes RTB** for invoking **sec 147**:
  - (i) A Later SC Judgement.
  - (ii) Retrospective Amendment in Law.
  - (iii) Evidence in possession of A.O. etc.
5. A mere **objection by an Audit team** cannot be termed as Reason to Believe. The belief should be of AO and not of Audit Team.

### **Sec 148: Service of Notice**

Before making an assessment or reassessment **u/s 147**, AO has to fulfill the following 2 conditions:

<b>Serve a notice</b> requiring the assessee to <b>file ROI</b> within the time specified in the notice.	<b>AND</b>	Record the <b>reasons</b> .
--	------------	-----------------------------

### → Key Notes:

1. If any income is **subsequently noticed** which has escaped assessment in earlier years, then there is **no need to record reasons** of the same. (**Explanation 3 to sec**

147)

2. It was held in the case of **Ranbaxy Laboratories Ltd and Jet Airways (P) Ltd** that the phrase '**and also**' used in **sec 147** is of wide import.

Therefore, the A.O **cannot independently tax "such other income" without charging the original income** for which reason to believe was recorded earlier **u/s 148**.

In such cases **if AO wants to tax** such independent income then he has to issue a **fresh notice u/s 148**.

3. The AO is required to **issue separate notice** for each assessment years.

4. Return filed **u/s 148 cannot be revised**.

5. It was held in the case of **Jawaharlal Gupta** that AO is duty **bound to supply** to the assessee the **reasons** recorded by him for issue of notice **u/s 148, after filing of ROI**.

6. Is the notice for reassessment issued under **sec 148** on the basis of tax evasion report received from the Investigation Unit of the Income-tax department valid, if such notice has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP?

It was held by Delhi HC in the case of **Sky Light Hospitality LLP** that the notice issued under **sec 148** on the basis of tax evasion report received from the Investigation unit of the Income-tax department is valid, since there was reason to believe on the basis of the said report that income had escaped assessment, even though the notice was erroneously issued in the name of the erstwhile company which has now been converted into LLP.

**Sec 149(1):- Time Limit for issue of Notice u/s 148.**

(a) If <b>escaped income</b> is likely to be <b>&lt; 1 lakh</b> then issue notice for <b>4 years</b> from end of R.A.Y. ↓	(b) If <b>escaped income</b> is likely to be <b>≥ 1 lakh</b> then issue notice for <b>6 years</b> from end of R.A.Y.	(c) If <b>escaped income</b> is w.r.t. a <b>foreign Asset</b> , etc then <b>16 years</b> from end of R.A.Y.

Sec 151: - Sanction	Sec 151: - Sanction
<ul style="list-style-type: none"> <li>By JC</li> <li>By AC/ DC/ITO if JC is satisfied with reasons.</li> </ul>	<ul style="list-style-type: none"> <li>By A.O. if P.C.C / C.C. / P.C. /C is satisfied with reason.</li> </ul>

→ Key Note:

It was held in the case of **Kanubhai M Patel** that what is to be seen is **date of sending** the notice u/s 148 and **not date of signing** the notice. The word used in **sec 149** is send.

### Exceptions to the Time Limit u/s Sec 149 (1)

#### First proviso to Sec 147:

Where an **Assessment** has been **made** earlier u/s 143(3) or u/s 147, then notice u/s 148 shall **not be issued after expiry of 4 yrs** from the end of R.A.Y. if the following 2 conditions are satisfied :

- (a) Assessee has **filed ROI**
- AND**
- (b) Assessee has **disclosed fully & truly** all material facts necessary for assessments.

→ **Note: It is possible only when income has escaped assessment because of mistake of A.O.**

#### Second proviso to Sec 147

**1<sup>st</sup> Proviso shall not apply** in respect of asset **located outside** India.

#### Sun Engineering Pvt Ltd (SC)

(1) Filed ROI for AY 2013-14 declaring income of Rs. 20,00,000	(+)(2) A.O. passed order u/s 143(3) disallowing an Exp "A" although SC allowed such exp in some other case Amt =	(+)(3) On 31.01.2020 A.O. issued notice u/s 148 for AY 2013-14 for escaped income =



	Rs. 15L Assessed income = Rs. 35L • No appeal / Revision / Rectification was filed.	Rs. 25,00,000.
(4) Assessee filed ROI as follows:-		
Assessed Income	35,00,000	
(+) Escaped Income	25,00,000	
(-) Expenses wrongly disallowed u/s 143(3)	<u>(15,00,000)</u>	
	45,00,000	

The assessee contended that undisclosed income of Rs. 25,00,000 should be reduced by expenditure of Rs. 15,00,000 which couldn't be made earlier.

The court has made the following observations as follows:-

- (1) **Sec 147 is not for the benefit** of the assessee.
- (2) The matters which have been **concluded earlier can't be revised u/s 147** i.e. **sec 147** does not wipe off the original order which has achieved finality.
- (3) The Assessee **can't be permitted to convert** the reassessment proceedings into appeal/revision proceedings and seek relief in respect of items rejected earlier.
- (4) Scope of **"such income" shall only be confined to the escaped of income** & no deduction shall be allowed from it for the purpose of **Sec 147**. However, if the assessee **can show nexus** between the escaped income & expenditure disallowed earlier, then it can be **considered to be reduced**.

Refer Page\_\_\_\_\_ for **Sun Engineering v/s Sec 152(2)**

**Sec 152(1):-** What would be the Tax Rate to be charged on Escaped Income?

The tax rate would be of the year to which escaped income relates and not of the year in which assessment is done.

**Time Limits for Completion of Assessment u/s 143(3)/144 & 147 is given u/s 153.**  
{Refer Time Limit Chapter}

ALL THE BEST