

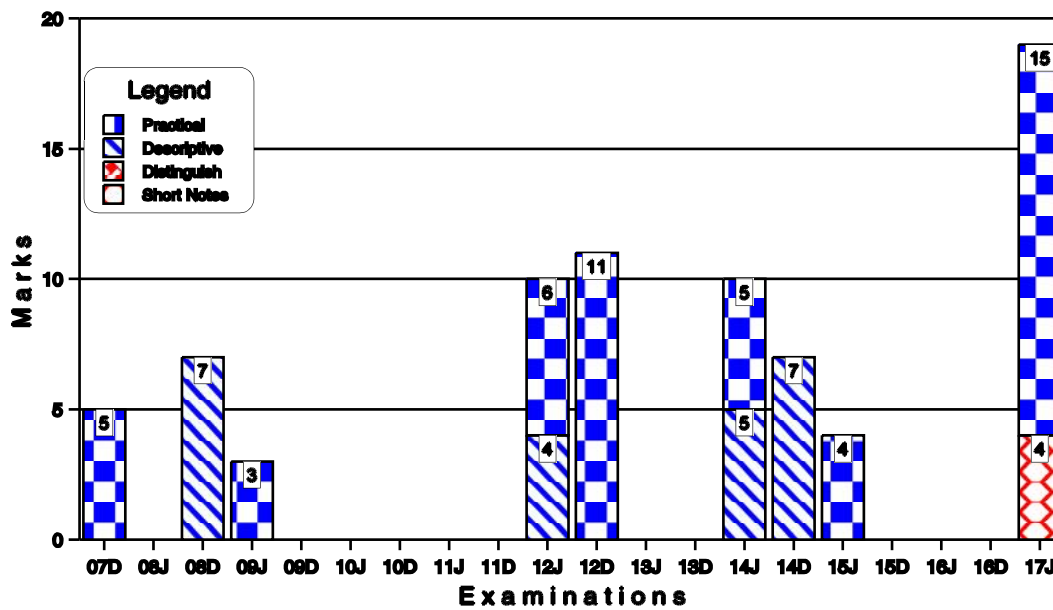
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RETURN OF INCOME & ASSESSMENT PROCEDURE

THIS CHAPTER INCLUDES

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| <ul style="list-style-type: none"> • Return of Income • Assessment Procedure | <ul style="list-style-type: none"> • Annual Information Return • Income Computation and Disclosure Standards (ICDS) |
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Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CHAPTER AT A GLANCE

Topic	Important Highlights
Return of Income	ITR-1 (Sahaj) {For Individuals having income from Salaries, one house property, other sources (Interest etc.) and having total income upto ₹ 50 lakh}
	ITR-2 {For Individuals and HUFs not carrying out business or profession under any proprietorship}
	ITR-3 {For Individuals and HUFs having income from a proprietary business or profession}
	ITR-4 (Sugam) {For Presumptive income from Business & Profession}
	ITR-5 {For persons other than,- (i) individual, (ii) HUF, (iii) Company and (iv) person filing Form ITR-7}
	ITR-6 {For Companies other than Companies claiming exemption under section 11}
	ITR-7 {For persons including companies required to furnish return under sections 139(4A) or 139 (4B) or 139 (4AC) or 139 (4E) or 139 (4F)}
	ITR- V: Acknowledgement
Assessment Procedure	Assessment procedure covers <ul style="list-style-type: none"> • Regular assessment U/s 143(3) • Self Assessment u/s 140A – payment of self assessment tax alongwith Challan No 280 • Summary Assessment u/s 143(1) • Best Judgment assessment u/s 144 • Income escaping assessment under section 147 • Assessment under search cases
Annual Information Return	Annual Information Return – section 285 BA Obligation to furnish statement of financial transaction or reportable account [section 285BA]

Income Computation and Disclosure Standards (ICDS).	Section 145 of the Income Tax Act 1961 provides <ol style="list-style-type: none"> 1. Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. 2. The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assesseees or in respect of any class of income. 3. Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.
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SHORT NOTES

2017 - June [8] Write Short note:

(c) Best Judgement Assessment

(4 marks)

DESCRIPTIVE QUESTIONS

2008 - Dec [1] {C} (a) Provide brief answers to the following:

(viii) Nathan Aviation Pvt. Ltd. wishes to challenge the order dated 10.03.2011 of the Assessing Officer directing them to undergo special audit u/s. 142(2A) on the ground that no opportunity was given to them. Advise. **(2 marks)**

Answer:

The direction given by the Assessing Officer is bad under in law. **Section 142(2A)** has been amended, as per which the assessee should be given an opportunity of being heard before issuing directions for special audit.

2008 - Dec [5] (c) The accounts of a firm are subject to tax audit under section 44AB of the Income-tax Act, 1961. Mr. X. is a working partner of the firm; he is however not entitled to receive any remuneration as per the

partnership deed. He files his return of income for the assessment year 2017-18 on September 30, 2017. The Assessing Officer charges interest u/s. 234A for delay in filing of return. Is the Assessing Officer justified?

(3 marks)

Answer:

Where the accounts of the firm are subject to tax audit then, for any working partner of such firm as per **section 139(1)**, the due date is 30.09.2017. For fixation of due date receipt of any remuneration from the firm is not required. Mr. X is a working partner of the firm. So he can submit his return of income on 30.09.2017 which is the due date to Mr. X for filing return of income. Therefore, the assessing officer is wrong here in charging interest **u/s 234A**.

2008 - Dec [6] (b) Discuss under what circumstances revised returns of income can be filed. (2 marks)

Answer:

If an assessee discovers any omission or a wrong statement in the return already filed by him he may furnish a revised return at any time before the expiry of one year from the end of relevant assessment year or before the assessment is made, whichever is earlier. A return may be revised any number of times. However, filing of a false return deliberately is not condoned by the filing of a revised return. If it is found that a false return has been filed willfully, the assessee will be subject to penalty, prosecution, etc. If any person, having furnished a return under **section 139(1)** or belated return under **section 139(4)**, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Effective from: A.Y.2017-18

Return furnished in pursuance of a notice issued under **section 142(1)** cannot be revised.

2012 - June [7] (a) What is a defective return under Income Tax Act, 1961? What are remedies available for the same ? (4 marks)

Answer:

Defective Return [Section 139 (9) of Income Tax Act, 1961

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 can be treated as defective if it is not properly filed in or the necessary enclosures are not accompanying the return. Specific defects are only illustrative and not exhaustive- ***CIT v. Rai Bahadur Bissesswarlal Motilal Malwasie Trust 195 ITR 825.***

2014 - June [7] Answer sub-divisions:

- (a) (i) If any assessment is remanded back to Assessing Officer, can he introduce new sources of income for assessment? **(3 marks)**
- (ii) Can the Department make fresh computation, once tax assessment is made final? **(2 marks)**

Answer:

- (i) Where the assessment is set aside by the Tribunal and the matter remanded to the Assessing Officer, it is not open to him to introduce into the assessment new sources of income so as to enhance the assessment.
Any power to enhance is confined to the old sources of income which were the subject matter of appeal (***Kartar Singh Vs. CIT (1978) III ITR 184 (P&H).***)
- (ii) It is now a well settled principle that an assessment once made is final and that it is not open to the department to go on making fresh computation and issuing fresh notices of demand to the end of all time. (***ITO Vs. Habibullah (S.K) (1962) 44 ITR 809 (SC).***)

2014 - Dec [5] (a) In the context of the provisions of section 143(1) of the Income-tax Act, 1961 regarding summary assessment, answer the following questions:

- (i) What are the adjustments that can be made by the Assessing Officer in course of processing of return of income? **(2 marks)**
- (ii) What is the time limit for sending intimation under section 143(1)? **(1 mark)**
- (iii) Is it mandatory for the Assessing Officer to process every return under section 143(1)? **(1 mark)**
- (iv) What do you understand by “incorrect claim apparent from any information in the return”? **(3 marks)**

Answer:

- (i) Adjustments to be made by software to the returned income while processing under section 143(1).

Where a return has been made under sec. 139, or in response to a notice under sec. 142(1), the total income or loss shall be computed after making the following adjustments, namely:

- (i) Any arithmetical error in the return; or
- (ii) An incorrect claim, if such incorrect claim is apparent from any information in the return;
- (iii) Disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under section 139(1);
- (iv) Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
- (v) Disallowance of deduction claimed under sec. 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sec. 139(1).
- (vi) Addition of income appearing in Form 26AS or Form 16A Form 16 which has not been included in computing the total income in the return:

However, no such adjustments shall be made unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode:

Further the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made.

- (ii) Time limit for sending intimation under **Section 143(1)** is one year from the end of the financial year in which the return is filed by the assessee.
- (iii) Processing of return under **Section 143(1)** is mandatory except in a case where a notice has been issued to the assessee under **Section 143(2)** taking up the case for regular assessment.
- (iv) "An incorrect claim apparent from any information in the return" shall mean the following claims, on the basis of an entry in the return of income:
 - (a) of an item which is inconsistent with another entry of the same or some other item in the return of income.
 - (b) In respect of which the information required to be furnished under the Act to substantiate the entry has not been furnished.
 - (c) In respect of deduction, where such deduction exceeds specified statutory limit expressed as monetary amount or percentage or ratio or fraction.

PRACTICAL QUESTIONS

2007 - Dec [3] (b) M/s Kunal & Co., a partnership firm, whose turnover is ₹ 62,00,000 filed its return of income on 29-10-2017, showing a loss of ₹ 2,40,000. On 29.11.2017, it is seen that certain expenses to the extent of ₹ 80,000 have been omitted to be claimed. Can a revised return be filed in December, 2017? Will your answer be different if the original return had been filed on 3.11.2017? **(5 marks)**

Answer:

Any return of loss filed **u/s 139(3)** partake the character of a return filed u/s 139(1) where it is filed within the stipulated time. In case of an assessee subject to tax audit, due date **u/s 139(1)** is 30.09.2017. Since, the return of loss he has been filed with in the time u/s 139(1) in view of **section 139(5)**, it can be revised in December 2017 if the assessment had not been completed can now be revised.

2009 - June [6] (c) The accounts of a firm are subject to tax audit under section 44AB of the Income-tax Act, 1961. Mr. Suba, a working partner of the firm, is entitled to receive a fixed remuneration of ₹ 20,000 per month. He files his return of income for the assessment year 2017-18 on 30th September, 2017. The Assessing Officer charges interest under section 234A for delay in filing of return. Is the Assessing Officer justified ? **(3 marks)**

Answer:

No the assessing officer cannot charges interest under section 234A for delay in filing return. Hence, the assessing officer is not justified.

2012 - June [7] (b) In the case of Ms Radha, you are required to compute the interest u/s 234A, 234B & 234C from the following details: Tax on total income for A. Y. 2017-18 ₹ 2,00,000; Due date for filing the return 30.09.2017; Actual date of filing the return 1.10.2017 and tax paid on 30.09.2017 ₹ 2,00,000. **(6 marks)**

Answer:

Computation of interest u/s 234A

Particulars	As per Assessed income	
Tax:		2,00,000
Less: Advance tax paid	Nil	
TDS	Nil	
Amount on which interest is payable.		2,00,000
Period of default (October being part of a month shall be considered)		1 month

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Interest u/s 234A (1% × 2,00,000 × 1 month)		2,000
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Computation of interest u/s 234 B:

Since assessee did not pay any amount by way of advance tax, hence she is liable to pay interest u/s 234B.

Particulars	Assessed Income
Shortfall	2,00,000
Period of default (From April to September)	6 months
Interest (1% × 2,00,000 × 6 months)	12,000

Computation of interest u/s 234C:

Due date	Advance Tax Payment due	Advance Tax Paid	Due date	Shortfall in paid Payment	Surplus	Months	Interest @ 1%
15.06. 2016	15% of ₹ 2,00,000 = 30,000	Nil	Nil	30,000	–	3	900
15.09. 2016	45% of ₹ 2,00,000 = 90,000	Nil	Nil	90,000		3	2,700
15.12.2016	75% of 2,00,000 = 1,50,000	Nil	Nil	1,50,000		3	4,500
15.3.2017	100% of 2,00,000 = 2,00,000	Nil	Nil	2,00,000		1	2,000
							10,100

Particulars	Amount
u/s 234A	2,000
u/s 234B	12,000
u/s 234C	10,100
Total Interest	24,100

2012 - Dec [5] (b) As a Tax Consultant how would you advise your client on the following issues on allowability or disallowability of expenses in the computation of income for filing of return under income tax act related to the financial year 2016-17 (Asst. Year 2017-18).

(i) Union Bank of India after considering the financial health of the

company waived ₹ 5,00,000 of unpaid interest for the financial year 2015-16. The said amount was taken as expenses during the financial year 2015-16 now credited to PIL during financial year 2016-17.

- (ii) A company was generating electricity privately for its factory. Later, as it incurred expense for electric lines which were laid from the trunk road to the factory. It paid ₹ 50 lakhs to the State Electricity Board as its contribution for this purpose. The ownership of the power-line was to vest with the State Electricity Board.
- (iii) Profit and loss account for the financial year 2016-17, debited with an amount of ₹ 75,000 as interest on the unpaid purchase price of an asset which was put to use from 1st September, 2016. This interest is pertaining to the period September, 2016 to March 2017.
- (iv) An amount of ₹ 2,50,000 of debtor has been written off as Bad debt in the books of accounts and claimed deductions u/s 36 (i) (vii) in the said return of income filed u/s 139. The Assessing Officer made disallowances for deductions of bad debts on the ground that the debt has not been established to have become irrecoverable and bad in the previous year 2016-17. **(2 x 4 = 8 marks)**

Answer:

- (i) Interest related to financial year 2015-16 waived by Union Bank of India would not have allowed as expenditure previously under **section 43 B** which resulted increase in taxable income to that extent. Interest waived is credited to profit and loss account following the accounting principle. But such Interest waiver credited to profit and loss account requires exclusion from the Net profit while computing business income.
- (ii) The new electric power lines were laid to run the factory efficiently but the ownership of the power lines was vested with the State Electricity Board for which benefit of depreciation **u/s 32** cannot be taken. So contribution of ₹ 50 lakhs paid to the State Electricity Board shall be allowable as revenue expenditure **under section 37(1)**.
- (iii) Interest of ₹ 75,000/- on unpaid purchase price in respect of capital asset which was put to use from 1st Sept 2016 that is for the period after the asset put to use. It is deductible **u/s 36 or 37** of income tax act. Since the amount debited to profit and loss account, it does not require any adjustment.
- (iv) Due to amendment made after 1st April 1989, it is not necessary for the assessee to establish that debt, in fact has become irrecoverable. It is enough if bad debt is written off as irrecoverable in the accounts of the assessee. It is correctly treated in the return.

2012 - Dec [6] (a) Mr. Ramesh is engaged in profession, filed his return of income for assessment year 2016-17 on 15th November, 2016. He disclosed an income of ₹ 4,00,000 in the return. In February, 2017 he discovered that he did not claim certain expenses and filed a revised return on 3rd February, 2017 showing an income of ₹ 1,80,000 and claiming those expenses. Is the revised return filed by Mr. Ramesh acceptable? **(3 marks)**

Answer:

Mr. Ramesh is engaged in profession. The due date for filing income tax return for assessment year 2016-17 as per **Section 139(1)** of the Income-tax Act is 30th September, 2016 if his accounts are required to be audited under any law. The due date is 31st July, 2016 if the accounts are not required to be audited under any law. The return was filed beyond the due date prescribed in **section 139(1)**. The return so filed is covered by **section 139(4)** and the time limit is one year from the end of the relevant assessment year. The Apex court in **Kumar Jagadish Chandra Sinha v. CIT 220 ITR 67 (SC)** has held that a return filed under section 139(4) is not eligible for revision and hence a revised return cannot be filed.

Hence, the return filed by Mr. Ramesh is not valid as the original return was not filed before the due date mentioned in **section 139(1)**.

Effective from: A.Y.2017-18

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

Return furnished in pursuance of a notice issued under **section 142(1)** cannot be revised.

2014 - June [5] (c) The income-tax assessment of Nathan Windmills Ltd. was completed under section 143(3) of the income-tax Act, 1961 for the assessment year 2008-09, accepting the claim of the assessee for deduction under section 80-IA. The Explanation to Section 80-IA was later on substituted by the Finance (No. 2) Act, 2009 retrospectively w.e.f. 01.04.2000, whereby the deduction was denied to profits derived as mere works contractor. The assessee was a mere works contractor only. The Assessing Officer, after nearly five years, sought to initiate the reassessment proceedings in March, 2016 on the grounds that the assessee had not disclosed that he had undertaken the projects only on works contract and that in the light of the retrospective amendment, deduction u/s 80-IA was not available, as a consequence of which income chargeable to tax has escaped assessment. Is the reopening justified? **(5 marks)**

Answer:

Reassessment proceedings can be initiated **u/s 147**, where income chargeable to tax has escaped assessment.

Where the assessment had been originally completed **u/s 143(3)**, reopening of assessment beyond four years can be made only where there is failure on the part of the assessee to disclose all material facts necessary for making the assessment.

When the original assessment was completed, the same was a scrutiny assessment; the assessment was made after examining the claim for deduction **u/s 80-IA**, including the audit reports filed.

When the original assessment was made, there was no denying of deduction for works contractor also. Hence it cannot be said that the assessee had failed to disclose material facts.

As a consequence, reassessment proceedings are not justified. The original assessment can be tested in the light of the law as it then stood and not on the basis of a retrospective assessment.

Similar view was taken by the Gujarat Court in the case of **Sadbhav Engineering Ltd. vs. Dy. CIT reported in (2011) 333 ITR 483(Guj)**.

2015 - June [6] (c) Vimala & Co., a partnership firm, which suffered business loss of ₹ 5 lakhs and unabsorbed depreciation of ₹ 4 lakhs, filed its return of income for the assessment year 2016-17 in June, 2016. The firm originally consisted of five equal partners of which two partners retired from the firm on 01.04.2016. The firm has income of ₹ 8 lakhs for the previous year 2016-17. It wants to know the 'due date' by which the return of income is to be filed for having unhampered carry forward of loss and depreciation. Assume the turnover of the firm as ₹ 105 lakhs. Your answer must be supported by reasons. **(4 marks)**

Answer:**Due date for filing return of income in given situation:**

Section 78 of the Income-tax Act, 1961 deals with the carry forward and set off of loss in the case of change in constitution of the partnership firm. The brought forward loss attributable to the share of the retired partners shall not be eligible for set off in the subsequent years.

However, this restriction applies only to losses and will not apply as regards unabsorbed depreciation brought forward from earlier year for set off.

The brought forward business loss attributable to retired partners i.e. 2/5 is not eligible for set off. The balance i.e. 3/5 of ₹ 5 lakhs being ₹ 3 lakh is eligible for set off.

The unabsorbed depreciation is also eligible for set off against income of the previous year 2016-17. The entire unabsorbed depreciation i.e. ₹ 4 lakhs and

business loss of ₹ 3 lakhs could be set off against the income of ₹ 8 lakhs. The firm has to file the return before 30th September 2017 as its accounts are to be audited under **section 44AB**. The filing of return **does not impact the brought forward business loss and unabsorbed depreciation** whether set off fully in this year or carried forward to subsequent assessment year for set off.

2017 - June [5] (a) Saraswati Ltd. has received a proper notice under section 148 for the Assessment Year 2014-15 on 22.03.2017. They also anticipate similar notices for the Assessment Years 2011-12 and 2012-13 for which they have already furnished return of income and for which assessments have been completed. On a scrutiny of the books of account produced, you have seen huge amounts of income which has escaped taxation. The tax effect for AY 2014-15 is ₹ 35 lakhs and for AYs 2011-12 and 2012-13 the differential tax is likely to exceed ₹ 1 crore. The company seeks your advice as to what should be done now. Advise the company suitably. **(7 marks)**

2017 - June [6] (b) Parthiv, aged 45, is resident of India. During the F.Y. 2016-17, interest of ₹ 3,10,000 was credited to his Non-resident (External) Account with UBI ₹ 70,000 being interest on fixed deposit with UBI, was credited to his saving bank account during this period. He also received ₹ 13,000 as interest on this saving account. Is Parthiv required to file return of income? What will be your answer, if he also owns one shop in Delhi having area of 250 sq.ft., for which he has received gross rent of ₹ 21,000 per month, property taxes being borne by the tenant? **(8 marks)**