RETURN OF INCOME

Section 139(1)

Every person :

(a) being a company or a firm; or

(b) being a person other than a company or a firm, if his total income or the ***total income of any other person in respect of which he is assessable*** [1] under this Act during the previous year exceeded the ***maximum amount which is not chargeable to income-tax*** [2],

shall, on or before the ***due date*** [3], furnish a return of his income or the income of such other person during the previous year, in the ***prescribed form*** [4] and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

1. ***Total income of any other person in respect of which he is assessable*** **:**

These words cover cases of representative assessees and legal representatives who are under an obligation to be assessed on income beneficially belonging to other persons e.g. guardian of a minor, lunatic or idiot, trustee of a trust, liquidator of a company in liquidation.

2. ***Maximum amount which is not chargeable to income-tax*** **:**

Category of person	Maximum amount which is not chargeable to tax
For resident woman (who is below 65 years at any time during the Previous Year)	₹ 1,90,000
For resident senior citizen (who is 65 years or more at any time during the Previous Year)	₹ 2,40,000
For any other individual, every HUF/ AOP/BOI/artificial juridical person	₹ 1,60,000
Firms, domestic companies, foreign companies, Local authorities	NIL

3. ***Due date*** **:**

Due date of filing Return of Income (ROI) [Explanation 2 to Section 139 (1)]

Category of person	Due date
1. Company	September 30, 2011
2. Any person other than a company :	
2.1 Where the accounts of the assessee are required to be audited under any law	September 30, 2011
2.2 Where the assessee is a ***"working partner"*** in a firm whose accounts are required to be audited under any law	September 30, 2011
2.3 In any other case	July 31, 2011

Note :

Where the last day for filing ROI is a day on which the income-tax office is closed, the assessee can file the return on the next day afterwards on which the income-tax office is open and, in such cases, ROI will be considered to have been filed within the specified time limit.

4. ***Prescribed form (Rule 12)*** :

INCOME-TAX RETURN FORMS		
S. No.	**Form No.**	**Form Description**
1	**ITR - 1 (SAHAJ)**	For individuals having income from salary/income from *one* house property/income from other sources (not being winning from lottery and income from race horses).
2	**ITR - 2**	For Individual (not covered under S.No. 1) and HUF not having Income from Business or Profession.
3	**ITR - 3**	For Individuals/HUF being partner in a firm and where income taxable under the head "PGBP" does not include any income except the income by way of any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by him from such firm.
4	**ITR - 4**	For Individual/HUF (not covered under S.No. 1, 2 and 3) and deriving income from a proprietary business or profession.
5	**ITR - 4S (SUGAM)**	For presumptive business income covered under Section 44AD & 44AE.
6	**ITR - 6***	For Companies (other than companies claiming exemption under Section 11)
7	**ITR - 7***	For companies claiming exemption under Section 11 and persons required to furnish return under Section 139(4A) or section 139(4B).
8	**ITR - 5***	For firm, AOP/BOI and other persons [not being an individual or a HUF or a company or persons to whom ITR-7 is applicable].
9	**ITR - V**	Acknowledgement of submission of ROI Where the data of the ROI in Form ITR-1, ITR-2, ITR-3, ITR-4, ITR-4S, ITR-5 & ITR-6 transmitted electronically without digital signature.

Note 1 : ITR-7 can be submitted only in paper format whereas other forms can be submitted in electronic as well as paper format.

Note 2 : If audit is required under Section 44AB, return is required to be submitted in electronic format with digital signature.

Fourth Proviso to Section 139(1)

Every person, being :

- an individual or
- a Hindu undivided family or
- an AOP / BOI or
- an artificial juridical person,

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, without giving effect to the provisions of ***Section 10A*** [1] or ***Section 10B*** [2] or ***Section 10BA*** [3] or ***Chapter VI-A*** [4] exceeded the maximum amount which is not chargeable to income-tax, shall, 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.

In other words, in respect of individual, HUF, AOP/BOI or artificial juridical person filing of ROI shall be compulsory if their Gross Total Income (instead of Total Income) before allowing deduction under Sections 10A, 10B or 10BA exceeds the maximum amount which is not chargeable to tax.

1. ***Section 10A*** : Special provision in respect of newly established undertaking in free trade zone, etc.
2. ***Section 10B*** : Special provision in respect of newly established hundred percent export oriented undertaking.
3. ***Section 10BA*** : Special provision in respect of export of certain article or thing.
4. ***Chapter VI-A*** : Deductions under Section 80C to 80U

Section 139(3) : Loss Return

If any person who has sustained a loss in any previous year under the head "Profits and gains of business or profession" or under the head "Capital gains" and claims that the loss or any part thereof should be carried forward under ***Section 72*** [1], or ***Section 73*** [2], or ***Section 74*** [3], or ***Section 74A*** [4], he may furnish, within the time allowed under Section 139 (1), a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under Section 139 (1).

Section 80 :

Notwithstanding anything contained in ***Chapter VI*** [5], 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 74, or Section 74A.

Question No. 1 : Whether loss can be carried forward if ROI is furnished after the due date specified in Section 139 (1) ?

Answer : Section 80 read with Section 139 (3) provides that the loss under the head "PGBP" or "Capital gains" cannot be carried forward if ROI is filed after the due date specified in Section 139 (1). However, the loss under the head "Income from house property" can be carried forward if ROI is furnished after the due date of filing ROI.

Question No. 2 : Can the loss be S/O if ROI is furnished after the due date specified in Section 139 (1) ?

Answer : Section 80 read with Section 139 (3) prohibits the **"carry forward and set-off"** of losses if ROI is filed after the due date specified in Section 139 (1). It does not prohibit the **"set-off"** of losses. Therefore losses can be set-off even if the ROI is furnished after the due date.

Question No. 3 : Due date of filing ROI is 30th September, 2011 in case of Mr. A. ROI is filed on 15th October, 2011 as follows :

PGBP	(3,00,000)
IOS	4,00,000
Total Income	1,00,000

Is set-off of loss under the head "PGBP" correct as per Section 80 read with Section 139 (3)?

Answer : Yes.

Question No. 4 : Due date of filing ROI is 30th September, 2011 in case of Mr. B. ROI is filed on 15th October, 2011 as follows :

PGBP	(4,00,000)
IOS	3,00,000
Total Income	(1,00,000)

Is set-off of loss under the head "PGBP" correct as per Section 80 read with Section 139 (3) ?

Answer : Yes. However loss of ₹ 1,00,000 shall not be carried-forward.

Question No. 5 : For previous year ended 31.03.2011, the due date of filing ROI is 31.07.2011 in case of Mr. C. The return is filed on 10.12.2011 showing the following :

Current year PGBP	(1,00,000)
B/F losses of A.Y. 2010-11	(3,00,000)

Whether losses can be carried forward ?

Answer : Losses of A.Y. 2010-11 amounting to ₹ 3,00,000 are carried forward to A.Y. 2011-12 because the ROI for A.Y. 2010-11 would have been filed on or before due date. Once the ROI is filed in time, then the losses can be carried forward for 8 assessment years. Therefore, the losses of ₹ 3,00,000 can be carried forward to A.Y. 2012-13. However, loss of ₹ 1,00,000 shall not be carried forward to A.Y. 2012-13.

East Asiatic Company India Private Limited : "Set-off and carry forward" of depreciation is governed by Section 32(2) and is not governed by Chapter VI. Section 80 overrides Chapter VI but it does not override Section 32(2). Section 32(2) nowhere provides that ROI should be filed on or before the due date for carry forward of unabsorbed depreciation. Therefore, unabsorbed depreciation can be carried forward even if the ROI is furnished after the due date specified in Section 139 (1).

1. ***Section 72*** : C/F & S/O of losses of non-speculative business
2. ***Section 73*** : Losses of Speculation Business
3. ***Section 74*** : Losses under the head Capital Gains
4. ***Section 74A*** : Losses from activity of owning and maintaining of race horses
5. ***Chapter VI*** : Set-off, or carry forward & set-off of losses

Section 139(4) : Belated Return

Any person who has not furnished a return within the time allowed to him under Section 139 (1), or within the time allowed under a notice issued under Section 142 (1), may furnish the return for any previous year 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.

Note :

"***assessment***" means assessment under Section 144 (i.e. Best Judgment Assessment).

completion of the "***assessment***" means the date of passing (i.e. signing) of the assessment order and not the date of issue or receipt of the assessment order.

Question No. 1 : For A.Y. 2010-11, no ROI has been filed and no assessment has been made under Section 144. Upto what time can the assessee file ROI ?

Answer : The assessee can file ROI under Section 139 (4) upto 31.03.2012.

Question No. 2 : For A.Y. 2010-11, no ROI has been filed. The A.O. makes a best judgment assessment under Section 144 on 31.12.2011. Upto what time assessee could have filed the ROI ?

Answer : The assessee could have filed ROI under Section 139 (4) upto 30.12.2011 (i.e. before the completion of the assessment).

Question No. 3 : For A.Y. 2010-11, no ROI has been filed. The A.O. makes a best judgment assessment under Section 144 on 31.12.2011. The said order is issued on 2.1.2012 and is received by the assessee on 5.1.2012. The assessee has filed a ROI for A.Y. 2010-11 on 1.1.2012. Comment.

Answer : Assessment is completed on the date on which the A.O. 'passes' the assessment order. As per Section 139 (4) a return can be filed 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. In the present case ROI could have been filed upto 30.12.2011 and therefore return filed on 1.1.2012 is time barred and invalid.

Section 139(4A)

If the ***Total Income*** of a charitable or religious trust or institution, ***before exemption under Section 11 & Section 12***, exceeds the maximum amount not chargeable to tax, then the trust or institution is under an obligation to furnish the return of income within the time allowed 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).

Note :

1. The tax rates applicable to a charitable or religious trust or institution are the same as applicable to an individual.

2. As per Section 12A, exemption under Section 11 and 12 shall be available only if the charitable or religious trust or institution gets its accounts audited in case the Total Income of the trust or institution before exemption under Section 11 & 12 exceeds the maximum amount which is not chargeable to tax in any previous year. Therefore the due date for filing ROI under Section 139 (4A) shall be 30th September of the assessment year.

   However if charitable or religious trust or institution does not wish to take exemption under Section 11 & 12 then the due date shall be 31st July of the assessment year.

3. **Penalty under Section 272A :** If a religious or charitable trust or institution fails to furnish the ROI within the time allowed under Section 139 (1), then it shall pay a penalty of ₹ 100 per day for every day during which the default continues. However penalty under ***Section 271F*** [1] shall not be levied.

4. If no ROI has been filed, then penalty under Section 272A shall be levied upto the date of best judgment assessment.

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1. ***Section 271F*** :

   - If a person who is required to furnish a return of his income,
   - as required under Section 139 (1) or by the ***provisos*** to that sub-section,
   - fails to furnish such return before the end of the relevant assessment year,
   - the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of five thousand rupees.

Section 139(4B)

If the ***Total Income*** of a political party, ***before exemption under Section 13A***, exceeds the maximum amount not chargeable to tax, then the political party is under an obligation to furnish the return of income within the time allowed 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).

Note :

1. The tax rates applicable to a political party are the same as applicable to an individual.
2. There is no separate penalty for non-compliance of Section 139 (4B). Provisions of Section 271F apply.
3. The due date of filing ROI in case of a political party shall be 30th September of the assessment year, if it wants to seek exemption under Section 13A as in that case audit is compulsory. Otherwise the due date is 31st July.

Section 139(5) : Revised Return

If any person, having furnished a return under Section 139 (1), or in pursuance of a notice issued under Section 142 (1), 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.

Note : ***"assessment"*** means assessment under Section 143 (3) [i.e. Scrutiny Assessment] or under Section 144 [i.e. Best Judgment Assessment].

Dhampur Sugar Mills Limited Vs. CIT

The revised return substitutes the original return from the date the original return was filed. Once a revise 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 revise return steps into the shoes of the original return.

Niranjan Lal Ram Chandra

If the assessee discovers any omission or any wrong statement in a revised return, it is possible to revise such a revise return provided it is revised within the prescribed time.

Hargovind Damji

Return filed within the period extended by the CBDT beyond the due date mentioned under Section 139 (1) is a return filed under Section 139 (1). It can therefore be revised under Section 139 (5).

Kumar Jagdish Chandra Sinha (Supreme Court)

Section 139 (5) provides that only a return filed under Section 139 (1) or in pursuance of a notice issued under Section 142 (1) can be revised. Therefore, a return filed under Section 139 (4) cannot be revised under Section 139 (5).

Question No. 1 : Whether a return filed under Section 139 (3) can be revised under Section 139 (5) ?

Answer : As per Section 139 (3), a return furnished under Section 139 (3) is deemed as it were a return furnished under Section 139 (1). Therefore, a return filed under Section 139 (3) can be revised under Section 139 (5).

Question No. 2 : For A.Y. 2010-11, the due date of filing ROI was 31.7.2010 and ROI is filed on 31.7.2010 declaring an income of ₹ 40,000. Revised return is filed on 31.12.2010 declaring a loss of ₹ 7,00,000. Can the loss be carried forward ?

Answer : As per the decision in Dhampur Sugar Mills Limited, the revised return is deemed to have been filed on 31.7.2010. As per provisions of Section 80 read with Section 139 (3), the loss of ₹ 7,00,000 shall be carried forward.

Question No. 3 : If in Question No. 2 above, the original return was filed on 10.9.2010 instead of 31.7.2010, whether the loss can be carried forward ?

Answer : The return filed on 10.9.2010 is a return filed under Section 139 (4). As per the decision of Supreme Court in Kumar Jagdish Chandra Sinha, a return filed under Section 139 (4) can't be revised under Section 139 (5). Therefore the return filed on 31.12.2010 is not a revised return but is void ab-initio. Therefore loss cannot be carried forward.

Question No. 4 : For A.Y. 2010-11, the due date of filing ROI was 31.7.2010 and ROI is filed on 15.9.2010 declaring a loss of ₹ 1,00,000. Revised return is filed on 31.12.2010 declaring a loss of ₹ 5,00,000. Comment.

Answer : The return filed on 31.12.2010 is not a revised return but is void ab-initio. The loss of ₹ 1,00,000 shall not be carried forward as per Section 80 read with Section 139 (3).

Question No. 5 : For A.Y. 2010-11, the due date of filing ROI was 31.7.2010 and ROI was not filed upto 31.7.2010. The A.O. issues a notice under Section 142 (1) and the assessee is asked to file the ROI by 15.12.2010. The assessee files ROI on 14.12.2010 declaring a loss of ₹ 2,00,000. The assessee files a revised return on 31.12.2010 declaring a loss of ₹ 6,00,000. Comment.

Answer : The return filed on 14.12.2010 is a return filed in pursuance of a notice issued under Section 142 (1). Revise return filed on 31.12.2010 is a valid return. However, the loss of ₹ 6,00,000 cannot be carried forward as per Section 80 read with Section 139 (3).

Section 139(9) : Defective Return

A return of income shall be regarded as defective unless it is accompanied by all the documents :

(a) A return in the ***prescribed form*** with all, statements and columns duly filled in.

(b) A statement showing the computation of the tax payable.

(c) Report of audit under Section 44AB, or, where the report has been furnished prior to the furnishing of the return, by a copy of such report together with proof of furnishing the report.

(d) Proof of the tax, if any, claimed to have been deducted at source and the advance tax and self-assessment tax, if any, claimed to have been paid :

Note : Where the return is not accompanied by proof of the tax, if any, claimed to have been deducted at source, the return of income shall not be regarded as defective if such certificate was not furnished to the person furnishing his return of income and such person produces the certificate within a period of two years from the end of the assessment year in which the income is assessable.

(e) Proof of the amount of compulsory deposit, if any, claimed to have been made under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974.

(f) Where regular books of account are maintained by the assessee, then copies of :

(i) Manufacturing Account, Trading Account, Profit & Loss Account (or, as the case may be, Income & Expenditure Account or any other similar account) and Balance Sheet;

(ii) In the case of a proprietary business or profession ----> the personal account of the proprietor.

(iii) In the case of a firm ----> the personal accounts of the partners.

(iv) In the case of AOP/BOI ----> the personal accounts of the members.

(v) In the case of a partner of a firm ----> his personal account in the firm.

(vi) In the case of or member AOP/BOI ----> his personal account in the AOP/BOI.

(g) Where the accounts of the assessee have been audited, copies of the audited profit and loss account, balance sheet and the auditor's report.

(h) Where cost audit has been conducted, under section 233B of the Companies Act, 1956, then the copy of such cost audit report.

(i) Where regular books of account are not maintained by the assessee, then a statement showing the amounts of turnover (or gross receipts), gross profit, expenses and net profit of the ***business or profession*** and the basis on which such amounts have been computed, and also disclosing the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.

Note :

1. Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he ***may*** [A] ***intimate*** [B] the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from ***the date of such intimation*** [C] or within such further period which, on an application made in this behalf by the assessee, the Assessing Officer may, in his discretion, allow. If the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed then, the return shall be treated as void ab-initio and it shall be deemed that assessee has not filed the return of income.

2. Where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the completion of assessment, the Assessing Officer may condone the delay and treat the return as a valid return.

3. **Behari Lal Chatterjee** :

   An unsigned return is not a defective return but is void ab-initio.

4. *Hotel Diwakar Niwas* :

   Merely because a return is filed under improper jurisdiction, it cannot be treated as void ab-initio.

A. ***may*** **:**

under Section 139 (9), A.O. is under an obligation to intimate the defect to the assessee and therefore word ***"may"*** used in the Section should be read as ***"shall"***.

B. ***intimate*** **:**

The A.O. shall intimate the defect to the assessee on plain piece of paper.

C. ***the date of such intimation*** **:**

the date of intimation means the date on which assessee receives the letter intimating the defect.

Section 139B : New scheme to facilitate submission of returns through Tax Return Preparers

Section 139B has been made effective from June 1, 2006. Salient features of this Section are as follows :

(1) For the purpose of enabling any ***specified class or classes of persons*** in preparing and furnishing returns of income, the Board (i.e. CBDT) may frame a Scheme*, by notification in the Official Gazette, providing that such persons may furnish their returns of income through a ***Tax Return Preparer*** authorised to act as such under the Scheme.

(2) Every Tax Return Preparer shall assist the persons furnishing the return of income in such manner as may be specified in the Scheme framed under this Section and affix his signature on such return.

(3) For the purposes of Section 139B :

(a) "Tax Return Preparer" means any individual who has been authorised to act as a Tax Return Preparer under the Scheme framed under this Section. However, following persons are not authorised to act as a Tax Return Preparer :

- any officer of a scheduled bank in which the assessee maintains a current account or has regular dealings; or
- a legal practitioner; or
- a chartered accountant

(b) "Specified class or classes of persons" means any person (other than a company or a person, whose accounts are required to be audited under section 44AB or under any other law for the time being in force) who is required to furnish a return of income under this Act.

(4) The Scheme framed by the Board under this section may provide for the following, namely :

(a) the manner in which and the period for which the Tax Return Preparers shall be authorised under Sub-section (3);

(b) 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;

(c) the code of conduct for the Tax Return Preparers;

(d) the duties and obligations of the Tax Return Preparers;

(e) the circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn;

(f) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this Section.

**** In exercise of the powers conferred by Section 139B(1), Tax Return Preparer Scheme, 2006 has been notified by the CBDT vide its Notification No. SO 2039(E), Dated 28-11-2006.***

Section 139C : Power of CBDT to dispense with furnishing of documents

Section 139C has been inserted with effect from June 1, 2006. It provides that the Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificate, audited reports or any other documents, which are otherwise under any other provisions of this Act, except section 139D, required to be furnished, along with the return. However, such documents shall be produced on demand before the Assessing Officer.

Section 139D : Power of CBDT to make rules for filing of return in electronic form

Section 139D has been inserted with effect from June 1, 2006. It provides that the Board may make rules providing for a class or classes of persons who shall be required to furnish the return in electronic form; the form and the manner in which the return in electronic form may be furnished; the documents, statements, receipts, certificate, audited reports which may not be furnished along with the return in electronic form but shall be produced before the Assessing Officer on demand.

Section 140 : Who shall sign the return?

The return shall be signed :

1. In case of an ***individual*** :
   (a) By the individual himself.
   (b) Where the individual is absent from India, then by the individual himself or by any other person duly authorised by him.
   (c) Where he is mentally incapacitated, then by his legal guardian or any person competent to act on his behalf.
   (d) If for any reason the individual is not able to sign, then by any person duly authorised by him.

   Note : In case of (b) and (d) above, the person signing the return should have a valid Power of Attorney from the individual to do so, which should be attached with the return of income.

2. In case of a ***partnership firm*** :
   (a) By the managing partner;
   (b) If there is no managing partner or if the managing partner is not able to sign because of unavoidable reasons, then by any partner of the firm not being minor.

3. In case of a ***Limited Liability Partnership (LLP)*** :
   (a) By the designated partner;
   (b) If there is no designated partner or if the designated partner is not able to sign because of unavoidable reasons, then by any partner of the LLP not being minor.

4. In case of a *HUF* :
   (a) By the Karta.
   (b) If Karta is absent from India or is mentally incapacitated, then by any adult member of the family.

5. In case of a ***company*** :
   (a) By the managing director.
   (b) If there is no managing director or the managing director is not able to sign because of unavoidable reasons, then by any director of the company.
   (c) Where the company is not resident in India, the return may be signed and verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return
   (d) In case of a company being wound up, by the liquidator.
   (e) In case of a company, whose management has been taken over by the Central Government or the State Government, by the Principal Officer thereof.

6. In case of a ***political party***, by the Chief Executive Officer of the party.

7. In case of a ***local authority***, by the Principal Officer thereof.

8. In case of an ***AOP or BOI***, by any member or the Principal Officer thereof.

9. In case of ***any other person***, by that person or by a person competent to act on his behalf (e.g. in case of minor : legal guardian, in case of a trust : trustee, in case of a deceased : legal heir).

Note :

If the return is not signed in accordance with the provisions of Section 140, then the return shall be *void ab-initio*.