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DETAILED ANALYSIS OF PROPOSED NEW INSERTED SUB SECTION (8A) SECTION 139 W.E.F.01.04.2022.

1) Before analysing the newly inserted sub section 8A for filing of updated return, brief overlook of the existing provisions of U/S139 of filing of Return.

A) Section 139(1)relates with a furnishing of return of income within a stipulated time as under,

- For an assessee who is company or a person other than a company whose accounts are require to be audited under this Act or under any other law for the time being enforce, it is 31st day of Oct of the assessment year.
- For an assessee who is require to furnish a report U/S 92E , it is 30th day of NOV of the assessment year.
- For any other assessee it is 31st of July of the assessment year.

B) Section 139(4) and section 139(5) related with Belated Return and revised return respectively.

- sub-section (4) of section 139 of the Act facilitates filing of a belated return after the expiry of due date, if such return is furnished before 3 months prior to the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

- Similarly, sub-section (5) of section 139 of the Act provides the taxpayer an opportunity to revise the return filed under sub-section (1) or sub-section (4) in case of any omission or wrong statement, after due date, which is to be filed 3 months before the end of the assessment year or before the completion of assessment, whichever is earlier. Both the return should be filed along with payment of Interest and in case of belated return along with late fee too.

These are the current provisions in respect of filing of return, Now in Finance bill 2022, new sub section i.e, 8A is proposed to introduce U/S 139 which **SEEMS** to give benefit to the Assessee beyond 139(4) & 139(5) **under the name of Voluntary tax compliance** but personal view honestly it will not give any benefits to the assesse so far, reason behind explaining further.

139(8A) NEW PROPOSED INSERTED SECTION W.E.F.01.04.2022(TO BE NOTIFIED)

Clear legal terms for 139(8A)

It is proposed to insert sub-section (8A) in section 139 of the Act to provide that: (i) Any person, whether or not he has furnished a return under sub-section (1), sub-section (4) or sub-section (5), for an assessment year (herein referred to as the relevant assessment year), may furnish an updated return of his income or the income of any other person in respect of which he is assessable under the Act, for the previous year relevant to such assessment year, within twenty four months from the end of the assessment year. Such return shall be furnished in the prescribed form and manner and shall contain prescribed particulars.

Hence after clear reading of this section , one can very well understand that there is an extended period of 24months benefit given for filing of return of income from the end of the assessment year. But the condition is also mentioned in the section that if assese is availing the benefit of extended period of 24 months then he has to pay 25% of addition tax (calculated on TAX +CESS+SURCHARGE+INTEREST) as reduced by Interest amount paid earlier while filing of (belated or revised return) if he is filing return after the expiry of time limit Under 139(4) and 139(5) and before completion of 12 months from the end of the relevant assessment year, if if it is filed after 12 months but before completion of 24 months then 50 % of Additional tax needs to paid, which seriously an assessee will not prefer and will give weightage to earlier 139(4) and 139(5) provisions only along with payment of interest, If non filing of return or wrong filing of return is unintentional.

UNDER FOLLOWING CIRCUMSTANCES ASSESSEE IS NOT ELEGIBLE TO FILE UPDATED RETURN U/S 139(8A)

1) In case of Loss return
2) In case of Reduced tax liability than before filed belated or revised return
3) In case of Refund claiming or enhancement of refund.
4) In case search has been initiated against the assessee U/s 132 or books of account, other documents or any assets re requisitioned U/s 132 A
5) A survey has been initiated U/s 133A
6) It is proposed to insert sub-section (8A) in section 139 of the Act to provide that: (i) Any person, whether or not he has furnished a return under sub-section (1), sub-section (4) or sub-section (5), for an assessment year (herein referred to as the relevant assessment year), may furnish an updated return of his income or the income of any other person in respect of which he is assessable under the Act, for the previous year relevant to such assessment year, within twenty four months from the end of the assessment year. Such return shall be furnished in the prescribed form and manner and shall contain prescribed particulars
7) A notice has been issued to the effect that any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.
8) A notice has been issued to the effect that any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.

9) The Assessing Officer has information in respect of such person for the relevant assessment year in his possession under the Prevention of Money Laundering Act, 2002 or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 or the Prohibition of Benami Property Transactions Act, 1988 or The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and the same has been communicated to him, prior to the date of his filing of return under the proposed sub-section (8A) of section 139 of the Act, or

10) Information for the relevant assessment has been received under an agreement referred to in sections 90 or 90A of the Act in respect of such person and the same has been communicated to him, prior to the date of his filing of return under the proposed sub-section (8A) of section 139 of the Act, or

11) Any prosecution proceedings under Chapter XXII have been initiated for the relevant assessment year in respect of such person, prior to the date of his filing of return under the proposed sub-section(8A) of section 139 of the Act, or

12) He is a person or belongs to a class of persons, as maybe notified by the Board in this regard.

Further it stated in the section that return filed under section 139(8A) will be defective, if the same is not supported by proof of payment U/S 140B.

140B a new section has been proposed to provide for the tax required to be paid for opting to file a return under section 139(8A) , which shortly states that Advance tax paid earlier, TDS, any relief u/s 89, or deduction of tax claimed u/s 90 or 91 or 90A & any tax credit claimed to be set off in accordance with the provisions of section 115JAA or Section 115JD.

CONCLUSION:

By reading and understanding of the complete context of proposed new section 139(8A) , my point of view is , it is not advisable to go for the extended period of 24 months for filing of return as it attracts 25% or 50% as stated earlier as an 'Additional Tax' which have cascading effect(Tax on tax) so better go for belated return or revised return section as the case may be. Because even if assesse files updated return by paying additional taxes it is not the case that department will not reopen the case for assessment.