Assessment procedure

Section 139 (1) Due Date of Filing Return

Company & firm	Whether income or loss
Other Assessee	Only if total income more than Basic Exemption limits

- Total income should be before deducting under chapter VI A ,Sec 10A,Sec 10B , Sec 10BA.
- Total income includes income of any other person W.R.T whom the assessee is liable ,eg Clubbing.

Due Date of filling Return

Company	- 30/09/AY
Auditable Assessee	
Working Partner	
Any other Assessee	31/7/AY
In case of companies ,assessee or otherwise subject to transfer pricing or having International transaction	30/11/AY

Note :- In case of a resident & ordinarily resident ,who is not required to furnish a return shall be mandated to file the return if he has :-

a) Any asset (including any financial interest in any entity) located outside India
b) Signing authority in any account located outside India

Section 139(1A) Filing through Employee

Assessee – Having income from Salary

- Option - To furnish return through the employer
- Date of employer – Furnish the return within due date

Eligible Employer

- Mininum 50 employers
- In specified Cities
- Taxable income of employees >Basic Exemption Limit
- Should be allotted TAN No.

Section 139 (1B) Filing of return in electronic Form

- Mandatory to file return of Income in electronic form in case of company & other assessee subject u/s 44 AB
- Individual & HUF to furnish their return of Income electronically where the total income exceeds Rs 10 lakhs for the relevant previous year

Section 139 (1C) Exemption from Furnishing Return Of Income

The central Government is empowered to exempt any class of persons from the requirement of furnishing a return of Income having regard to such conditions as may be prescribed

Section 139(3) Return of losses

Business losses	File within Due Date otherwise Losses cannot be carried forward.
Capital losses	
Loss from owning &Maintaining race horses	

Unabsorbed Deprecation	Can be carried forward even if return is not filled or filled belatedly
Loss from House Property	

Section 139(4) Belated Return (Filled after due date)

Time Limit - Within one year from the end of the relevant assessment year OR completion of assessment year whichever is earlier.

Filed after Time Limit - Invalid return not belated

Section 139 (4A) Return of Income

Charitable Trust

- Only if total income >Basic Exemption Limit
- Total Income should be before Exemption limit u/s 11 & 12.

Section 139(4B) Return of Income

Political Party

- Only if total income >Basic Exemption Limit.
- Total income should be before exemption U/s 13A.

Section 139 (4C) Association & institutions

- Only if total income >Basic Exemption Limit.
- Total income should be before Exemption U/S 10.

  Only if total Income exceeds Basic Exemption Limit.

- **Scientific research Association** :- Sec 10(21)
- **News Agency** :- Sec 10(22B)
- **Khaki/Village Development** :- Sec 10(23B)
- **Trade Union** :- Sec 10(24)

Scientific Research Association other than covered by section 10(21)

Institution carrying out Science, social, Research = whether income or loss.

Any university /other educational Institution ,any hospital or medical institution wholly or substantially financed by CG can avail exemption u/s 10 (23 C) without any need of filing return

Section 139(5) Revised Returns

Time limit- - Within one year from the end of the relevant assessment year OR completion of assessment year whichever is earlier.

- Belated Return cannot be revised.
- However, return filed in response to notice U/S 142(1) can be revised.
- Mistake should be bonafide not deliberate.
- 2nd Revised return can be filled to curve defect in 1st revised return.

Section 139 (9) Defective income

A return of Income can be regarded as defective by the A.O. under the following circumstances :-

a) Annexure ,statements & columns in the return of Income have not been duly filed
b) Return of Income has not been accompanied by :-
i) Statement showing computation of tax or returned income
ii) Proof of tax claimed to have been deducted or collected ,advance tax paid & self assessment tax paid
iii) Tax audit report u/s 44 AB
c) Where regular books are maintained
i) Manufacturing or Trading a/c
ii) P&L a/c
iii) Balance sheet
iv) Statement indicating the amount of turnover or gross receipt ,gross profit ,expenses &net profit

Has not been furnished

d) If accounts are audited & copies of audited statement of accounts & auditor's report have not been filed

a) The A.O . may intimate the defect in the return of Income to the assessee .The assessee may be called upon to rectify the defect within 15 days from the date of service or within such extended time allowed on application by the assessee

Section 139A + Rule 114 PAN Card

Who should apply?

- Total income >Basic Exemption Limit
- Turnover / Gross Receipts Of business >500000
- Trust/Society
- Importer/Exporter
- AO has discretionary power to allot PAN.

Total Income =Net Taxable Income.

Assessee should not have more than one PAN.

Where PAN should be quoted?

1) Return/Challans/TDS certificate and all correspondence with IT department.
2) Sale /Purchase of assets ,if immovable property more than RS 500000
3) Investment

Securities

Bonds & RBI bonds
More than RS 100000

Shares/mutual Fund/company

RS 50000 or more

4) Transaction with Bank

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Opening bank A/C , Purchase of DD , cash deposit on single day Post office saving Bank RS 50000 or more

5) Application :- Telephone ,credit cards

6) Expenses:- Hotel Bills > Rs 2500 , Foreign Travel –cash Expenses

<u>Section 140 who should sign Return</u>.

Individual

Normally – himself
Absent from India – Himself or by Authorised person / power of attorney holder
Mentally Incapacitated - person competent to act on his behalf / Legal Guardian.

HUF

Normally - Karta

Karta Absent from India or Mentally Incapacitated – Any other adult members.

Company

Normally – Managing Director
MD cannot sign – Any other Director
Non - Resident Co- POA Holder
Co. in Liquidation – Liquidator
Co. taken over by government – Principal Holder

Partnership Firm /LLP

Normally – Managing partner /Designated Partner
No Managing Partner or cannot sign- Any other partners but not a minor

Local Authority – Principal Officer

Political Party- Chief Executive Officer (CEO)
AOP- Any member or principal officer

Any other person – That person or other person competent to sign on his behalf

Section 140 A self assessment Tax

This Section required that the Assessee himself should compute his total income tax & the assessee himself should pay the tax (along with interest)

Income tax (including SC + EC) on the income mentioned in return	XXX
Add: Interest u/s 234A – If return is not filed or filed after due date	XX
Less: Relief u/s 89/90/90A/91	XX
Less: MAT credit u/s 115JAA	XX
Less: TDS/TCS	XX
Less: Advance tax	XX

Section 142 Inquiry Before Assessment :-

Section 142(1) Sending Notice (RAI Notice)

- As per this section ,the A.O may issue a notice to the assessee requiring him :-

a) To furnish return of Income (**if the assessee has not filed up to the due date)**

b) To produce accounts & documents (**accounts of minimum 3 proceeding years ,can be demanded)**
c) To furnish such information as the A.O may require
- Prior approval of Joint commissioner is necessary

<u>Section 142 (2) Making Inquiry</u>

In order to obtain full information about the income of the assessee ,the A.O may make any such enquiry as he thinks fit

<u>Section 142 (2A/2B/2C/2D) Special Audit</u>

Section 142 (2A) :- As per this section ,the A.O may issue a Direction requiring the assessee to get his accounts audited by CA nominated by CIT/CCIT (Commissioner of Income Tax/Chief Commissioner of Income Tax).The A.O can issue such direction if all the following conditions are satisfied :-

a) The A.O should consider it necessary having regard to the nature & complexity of the accounts
b) The A.O should take the permission of CIT/CCIT
c) The A.O should provide an opportunity of being heard to the assessee

<u>Section 142 (2B)</u>

Special Audit is compulsory even if the accounts of the assessee are already audited

<u>Section 142 (2C)</u>

Audit report should be furnished within the time prescribed by A.O .This time can be extended ,but the total time (original +Extension)should not exceed 180 days

<u>Section 142 (2D)</u>

Expenses of the audit (including remuneration of CA) shall be determined by CIT/CCIT & it should be paid by Government

Section 142 (3) Opportunity of Being Heard

If the A.O proposes to use the materials /evidence gathered during the inquiry (against the assessee),then he should provide an opportunity of being heard to the assessee

Note :- failure to comply with the terms of notice u/s 142 (1) or direction u/s 142 (2A) shall attract penalty of RS 10000 per defau

lt u/s 271 (1)(b)

Section 143 (1) Summary Assessment

1) Summary assessment means assessment without enquiry
2) Summary assessment is done on the basis of "Return" subject to following adjustment
   a) Adjustment of arithmetical error
   b) Adjustment for apparent incorrect claim
   c) After above adjustments, if any amount is due from the assessee ,it shall be demanded & if any refund is due ,it shall be granted .This is done by sending an Intimation to the assessee .If neither any tax is payable nor any refund is due then the acknowledgement of the return filed shall be deemed as intimation under this section

Note:- intimation under this section should be sent within 1 year from the end of the year in which return is filed

(Revised return cannot be filed ,after we receive intimation (not allowed as per section 154),scrutiny can start after we receive refund)

Section 143 (2),143(3) Regular Assessment /Scrutiny

Assessment :-

1. Regular assessment means assessment with inquiry
2. In most of case, summary assessment is done but in some cases ,scrutiny is initiated
3. Scrutiny is initiated by A.O in order to ensure that the assessee has not :-

a) Understated the Income
b) Underpaid the tax
c) Claimed excessive loss

4. Scrutiny is initiated by A.O by sending a Notice u/s 143 (2) requiring the assessee to attend the office of A.O & produce evidence on which the assessee may rely

Note :- This notice should be received by the assessee within 6 months from the end of the year in which return is filed

5. After calling the assessee & after hearing the assessee ,the A.o shall determine the total Income /Tax & if any amount is payable ,it will be demanded .If any refund is due, it shall be granted .This is done by passing an Assessment order u/s 143 (3)

Note :- Assessment u/s 143 (3) should be completed in the order should be passed within 21 months from the end of A.Y (sec 153)

6. Assessee under this section is done on the basis of :-

a) Materials gathered by A.O
b) Evidence produced by Assessee

Note :- Scrutiny can be initiated even after Summary Assessment

Section 144 :- Best Judgement Assessment/Ex-Parte Assessment

1) Under this section , assessment is done on the basis of :-

a) Materials gathered by A.O

b) Judgement of A.O
2) Best Judgement assessment is done in following circumstances
a) Failure to file return u/s 139(1)/139(4)
b) Failure to comply with the terms of Notice u/s 142(1) or direction u/s 142(2A)
c) Failure to comply with the terms of Notice u/s 143(2)
3) Before completing the assessment according to his judgement ,the A.O should issue a "Show Cause Notice" to the assessee requiring him to give reason as to why the assessment should not be done according to the judgement of A.O .However ,if best Judgement is done because of assessee failure to comply with notice u/s 142(1) then show cause notice is not required .
4) Assessment u/s 144 should be completed i.e. the order should be passed within 21 months from the end of A.Y (section 153)

<u>Section 147 to 152 Income escaping Assessment/Assessment ,reassessment & computation</u>

1) If the A.O has reasons to believe that the income of a particular year has escape Assessment then the A.O can assess /reassess such income or recomputed loss of such year
2) Income is deemed to have escape assessment in following circumstances :-
a) Return of Income of a particular year is not filed (even the total income of such years exceeds basic exemption)
b) Return of Income of a particular year is filed but the Income is understated or excessive loss claimed
c) Return of Income of a particular year is filed & assessment of such year is completed (order is also passed but the income is under assessed

3) Procedure :-

a) The A.O should have reasons to believe that the Income has escaped assessment ,such reasons should be recorded & it should be supplied to the assessee (if demanded by the assessee)

b) The A.O shall issue a notice u/s 148 requiring the assessee to furnish the return of income of the relevant A.Y (within the time prescribed in the notice) such notice shall be issued within 4 years from the end of the relevant A.Y (if the escaped income is Rs 100000 or more than notice should be issued within 6 years from the end of the relevant A.Y)

c) After the assessee files the return ,the A.O shall issue the notice u/s 143(2) requiring the assessment to attend the office of A.O & produce evidence .This notice should be received by the assessee within 6 months from the end of the year in which return u/s 148 is filed

d) After calling the assessee & after hearing the assessee ,the A.O shall determine the Total Income /Tax of relevant A.Y .This is done by passing Assessment Order u/s 147

<u>Note :-</u> Assessment u/s 147 should be completed i.e. order should be passed within 9 months from the end of the year in which notice u/s 148 is received by the assessee (section 153)

4) Other points

a) <u>Reasons to believe</u>

Proceeding u/s 147 can be initiated only if the A.O has reasons to believe

Eg. I) Evidence in the possession of A.O

II) Supreme Court Judgement

III) retrospective amendment in law

Mere change in opinion ,rumours ,gossip & suspicion cannot be treated as reasons to believe

b) Other Escaped Income

Once Proceeding u/s 147 is initiated ,the A.O can also assess /reassess “other “Escaped income which is subsequently discovered during the proceedings under this section (even if reasons are not recorded for such “other” escaped incomes)

However , if the main escaped income (in respect of which proceeding was initiated) is not assessed /reassessed .The A.O cannot assess .reassess “other” escaped incomes .In such case , the A.O has to initiated fresh proceeding u/s 147 to assess/reassess such “other” escaped income

c) Appeal Matters

The A.O cannot assess/reassess incomes involving matters which are subject matter of appeal

d) Sanction for Issue of notice u/s 148

Before issuing notice u/s 148,the A.O requires permission as follows ;-

Previous Assessment	To issue within 4 years	To issue after 4 years up to 6 years
u/s 143(3) /147	ITO requires permission Joint commissioner	Everyone requires permission of CIT/CCIT
Otherwise	N o one requires permission	ITO/AC/DC requires permission of JC

e) Time Limit for issue of Notice u/s 148

Normally ,notice u/s 148 can be issued within 4 years/6 years from the end of relevant A.Y However ,there are 3 exceptions to this rule

Exception 1

If all the following 3 conditions are satisfied than the notice u/s 148 cannot be issued after 4 years even if the escaped income is Rs 100000 or more

i) The assessee should have filed the return of relevant A.Y.
ii) Assessment of the relevant AY was completed u/s 143(1) /147
iii) The assessee should have made full & true disclosure of the material facts relevant to the proceedings

<u>Note :-</u> This means if the assessee was systematic & the assessment was properly done ,than also the income has escaped ,i.e. it is due to the fault of the department .Hence, assessment cannot be reopened after 4 years

<u>Exception II</u>

If notice u/s 148 is to be issued to the agent of Non resident than it should be issued within 2 years from the end of relevant A.Y

<u>Exception III</u>

If the proceeding u/s 147 is initiated in order to give effect to the finding or direction contained in the order of an Authority under the appeal/reference /revision than the notice u/s 148 can be issued any time (no time limit)

*** hence ,whenever A.O reopens a case as per the order of appeal authorities ,there is no time limit .but if A.O re- opens a case at his own initiative than it is time bound (max 4 years/6 years)

f) <u>Benefit of Government</u>

Proceeding u/s 147 is for the benefit of government .This means the assessee cannot claim benefits in this proceeding .Even if the assessee genuinely deserves some deduction ,etc in respect of relevant A.Y ,he cannot claim his proceedings u/s 147 (because the assessee has other remedies to get his benefits like revised return, rectification u/s 154 or appeal)

However ,if there are some expenses related to escaped income, than deduction for such expenses is allowed but such deduction should not exceed the amount of escaped income .

g) **Dropping of proceeding (Section 152)**

The assessee can claim that the proceeding u/s 147 shall be dropped if the assessee can show that he has already been assessed on an amount which is more or equal to what he would have been rightly liable for .(if assessment was properly done after considering the escaped income) .This can be claimed only if the assessee did not oppose the original assessment order

h) Rate of Tax
The escaped income shall be taxed as per the rates applicable to relevant A.Y

Section 153 Time Limit for completing Assessment

153(1)	Passing assessment order u/s 14 /144	Within 2 years from the end of assessment year in which income was first assessable
153(2)	Making assessment /reassessme etc u/s 147	Within 1 year from the end of F.Y which notice is served
153(2A)	Making assessment in pursuance of order u/s 250,254,263 or 264 setting aside or cancelling assessment	Within 1 year from the end of F.Y which order u/s 250/254 is receiv by commissioner/CC or order u/s 263,264 is passed by CC /Commissioner

Where the assessment involves reference to Transfer Pricing Officer U/s 92 CA(1) the following time limits shall apply

153(1)	Passing assessment order u/s 14 /144	Within 3 years from the end of assessment year in which income

		was first assessable
153(2)	Making assessment /reassessme etc u/s 147	Within 2 year from the end of F.Y which notice is served
153(2A)	Making assessment in pursuance of order u/s 250,254,263 or 264 setting aside or cancelling assessment	Within 2 year from the end of F.Y which order u/s 250/254 is receiv by commissioner/CC or order u/s 263,264 is passed by CC /Commissioner

Section 154 Rectification of Mistakes

1) As per this section ,the income tax authorities (AO+ commissioner/CIT/CCIT) can rectify a mistake in the order or Intimation if such mistake is "apparent" from the record
2) Rectification can be done by IT authority either

I) On his own motion or

II) On an application made by the assessee

3) If rectification is done by IT authority on his own motion than it should be done within 4 years from the end of the year in which "order sought to be "rectified" is passed .If the assessee applies than it should apply within 6 months from the end of the month application is received by I.T authority (subject to overall time limit of 4 years)
4) A rectified order can be further rectified & the time of 4 years is calculated from the end of the year in which rectified order is passed
5) The amendment of an order ,which has the effect of enhancing an assessment or reducing the refund or otherwise increasing the liability of an assessee ,shall not be made without giving reasonable opportunity to the assessee of being heard
6) On the other hand ,where any such amendment has the effect of reducing the assessment or otherwise reducing the tax liability ,the A.O shall make refund which may be due to the assessee

Order

Mistake

Debatable → Section 147 (for department)

Appeal for assessee

non debatable → Apparent → Section 154(for department as well as assessee)

Section 156 :- Notice of Demand

1) After the assessment is completed ,the AO should serve a notice of demand to the assessee (if any amount is due from the assessee)
2) There is time limit for completing the assessment but there is no time limit for issuing notice of demand
3) Without issuing of demand , the department cannot initiate recovery proceeding
4) The assessee should pay the amount demanded within 30 days from the date of receipt of Notice of Demand .If the assessee fails to pay within this time than the department shall initiate recovery proceeding ,the assessee will be treated as "Assessee in default"(accordingly the assessee will be liable to interest u/s 220 & penalty u/s 221)
5) In case of summary assessment ,the imitation u/s 143 (1) is deemed as nature of demand

Section 144 A :- Power of Joint Commissioner to issue Direction

1. The JC may call for & examine the records of the proceedings in which assessment is pending
2. After examining the records , if the JC considers necessary (having regard to the nature of the case, amount involved or any other reason) then he shall issue directions for the guidance of A.O
3. The directions of JC are binding on A.O
4. If the directions are pre-judicial to the assessee should be given an opportunity of being heard
5. The JC shall exercise this power either

i) On his motion

ii) on an application made by assessee

III) On a reference made by AO

Section 145 Method of accounting

1. "Income from business & Income from other Source" is taxable either on due basis or receipt basis depending on the method of accounting . This means if assessee follows mercantile system of accounting then taxable on due basis & if assessee follows cash system ,then taxable on receipt basis
2. If the accounts of the assessee are Incorrect or Incomplete or if the method of accounting is not regularly followed or accounting standards are not followed ,then the AO can reject the accounting of the assessee & he can complete the assessment according to his best judgement

Note :- Best Judgement u/s 144 is compulsory but best judgement u/s 145 is discretionary .