

Issues Related To Filing Return Of Income

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THE word issues has various meanings. But so far the assessment procedure under Direct Tax Laws is concerned, it may be described as:

When in the course of assessment proceedings, the assessee and assessing officer comes to a certain and material point which is affirmed by the one and denied by the other, they are said to be at issue.

Major Issues Related to filing of return of income are :

(i) **FORM OF RETURN OF INCOME** : -The form of return of income is prescribed in rule 12 of the Income Tax Rules, 1962,

Rule 12 is statutory and mandatory in nature. The filing of return of income in proper form is primary condition of assessment procedure, which has to be complied with. A valid assessment can be made only after filing of the return in the prescribed form. An assessment would be void ab initio, if it is based on the return of income submitted in a form other than the prescribed form. In consequence thereof entire proceeding would be illegal. [-MAYA DEVI BANSAL Vs. CIT (1979) 117 ITR 125 (CAL)].

But when, the assessee furnishes return of income in the form other than the form prescribed as per rule 12 and acted upon by the assessing officer, then assessing officer cannot take the plea that the return of income was non-est. - CIT Vs. ROYAL TEXTILES (1979) 120 ITR 506 (MAD.)

(ii) **FILING OF RETURN WITH WRONG JURISDICTION** :-A return filed before an officer who held no jurisdiction over assessee is a non-est return. [INDUSTRIAL TRUST LTD. Vs. CIT (1973) 91 ITR 550 (SC)].

(iii) **THE MEANING OF WORDS "HIS-INCOME" USED IN SEC. 139 (1) OF THE I.T. ACT, 1961** : -The word "his-income used in Section 139 (1) of the IT Act, 1961, includes all incomes for which an assessee is obliged to submit return of income. Accordingly, as per clubbing provisions of Section 60-64 of the Act, incomes belonging to other persons are part of his income for the purpose of this section. CIT Vs. SMT. P.K. KOCHAMMU AMMA (1980) 125 ITR 624 (SC)

(iv) **DUE DATE IS A HOLIDAY** : -When due date for filing a return of income is a public holiday, then return of income may be furnished on the next opening day and it is deemed to be a compliance on the due date. (Section 10 of The General Clauses Act, 1897), (Circular No. 639, dated. 13.11.1992 issued by CBDT).

(v) **LOSS RETURN** :-Section 139(3) enables any person who has sustained a loss in any previous year to carry forward such loss but the assessee has to furnish the return within the time allowed U/s 139 (1) of the I.T. Act, 1961,

But, there may be a situation, where there may be a loss as per computation of income due to depreciation and not actual loss suffered by the business. In such circumstance, the return is not of loss but will have unabsorbed depreciation to be carried forward to next year. Such return not submitted within time allowed U/s 139 (1) of the Act, may be considered for being assessed. CIT Vs. NAGPUR

GAS & DOMESTIC APPLIANCES (1984) 14 ITR 440 (BOM.)

(vi) **BELATED RETURN** :Section 139(4) of the Act, enables any person who has not furnished a return within the time allowed to him, to 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. Consequences: -If an assessee submits a return beyond the period as stipulated U/s 139(4) of the Act, then such return is non-est in law.

(vii) **RETURN FILED ON THE LAST DAY OF LIMITATION OR ON DAY OF ASSESSMENT** :- Where the return is filed on the last day of limitation, the Assessing Officer has to deal with it and he cannot take recourse to reassessment proceeding ignoring such return. SMT. SUNITA DEVI JAIOURIA Vs. ITR (1971) 79 ITR 391 (CAL.)

A return filed on the day of the assessment but before signing of the assessment order must also be accepted by the Assessing Officer, otherwise it will be taken that assessee is deprived of his right Under Section 139 (4)--JHANDA RAM & SONS Vs. H.C. GARG (1966) 59 ITR 148 (ALL)

(viii) **RETURN IN PURSUANCE OF NOTICE U/s 148/ 139(4)** : - Where an assessee has neither filed a return U/s 139(1), nor been required by a notice U/s 142(1) to file a return but is subsequently required by a notice U/s 148 and that notice U/s 148 turns out to be invalid for any reason whatsoever, the return filed by the assessee, even in response to such invalid notice, would be a valid return filed U/s 139(4).CIT Vs. S. RAMAN CHETTIAR (1965) 55 ITR 630 (SC)

(ix) **RETURN IN RESPONSE TO NOTICE U/s 148** : In the case of completed assessment proceedings, proceeding U/s 147 of the I.T. Act, 1961, initiated for reassessment and notice issued . In response to notice, following reply is submitted.

The earlier return of income may kindly be treated to have been filed in response to the notice.
Now, the question arises whether reply supra is sufficient compliance ?

Remember that after completion of the original assessment, the valid return ceases to exist. Therefore, the above reply of notice U/s 148 is not sufficient compliance. Therefore, there was no return in response to notice U/s 148 of the Act.

(x) **MORE THAN ONE RETURN FILED U/s 139 (4)** : -After having filed a return U/s 139 (4), if an assessee filed another return, it is to be assumed that he required to treat the earlier return to be non-est, and accordingly to him, only the return filed subsequently is the correct and proper return, if any assessment is made on the basis of the latest return, the assessee cannot content that the return filed subsequently is invalid. CIT Vs. Dr. N. SHIRVASTAVA (1988) 170 ITR 556 (M.P.)

(xi) **REVISED RETURN** :-Provisions of Section 139(5) of the Act empowers only those assesses who have furnished returns U/s 139(1) or in pursuance of a notice issued U/s 142(1), to furnish a revised return if the assessee discovers any omission or any wrong statement in the originally filed return. Revised return can be furnished before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier.

It is possible that omission or wrong statement may be discovered by the department as a result of some enquiry and thereafter to escape from the consequence of penal provisions, the assessee furnishes revised return making amendments. This will not, however, be treated as a revised return within meaning of Section 139(5).

- SULEMAN GANIBHAI Vs. CIT (1980) 121 ITR 373 (M.P.)

Where the assessee originally files a false or conceals particulars of income knowingly, then he is not permitted in law to file a revised return.

- CIT Vs. DR. KUMARI M. DUBEY (1988) 171 ITR 144 (M.P.)

Belated return cannot be revised. A belated return filed Us/ 139 (4) is incapable of being revised because of specific statutory provisions. KUMAR JAGDISH CHANDRA SINHA Vs. CIT (1996) 220 ITR 67 (SC).

The opinion barring revision of a belated return becomes un-workable in view of permissibility of more than one belated return u/s 139(4) itself. Thus if an assessee is not allowed to revise or correct the mistake u/s 139(5), he cannot be statutorily debarred from doing the same under section 139(4) because section 139(4) puts no restriction on the number of belated returns, accordingly, the purpose of revision is indirectly solved by taking the shelter of section 139(4) itself.