

Order passed u/s 263 can be **appealed** against at **ITAT** level.

➤ Appeal to H.C [Section 260A and 260B]

- Appeals to H.C can be filed within 120 days only if there is **Question of Law**
- Appeal form, fees and procedure governed by Code of civil Procedure, 1908.
- HC has power to review its order

➤ Appeal to S.C [Section 261 and 262]

Appeal against HC order

**Within 90 days**

SC have **power to review** its order.

Form, fees and procedure - Code of Civil Procedure, 1908.

➤ Difference between power of CIT(A) and ITAT

	CIT(A)	ITAT
• Power to <b>enhance the Assessment</b>	Yes	No
• Power to <b>reduce / confirm the Assessment</b>	Yes	Yes
• Power to set aside and <b>refer back to A.O for fresh Assessment</b>	No	Yes
• Power to <b>condone delay</b>	Yes	Yes

Remarks

- |   |     |     |
|---|-----|-----|
| • Power to make inquiries                           | Yes | Yes |
| • Power to rectification of mistakes                | Yes | Yes |
| • Power to review                                   | No  | No  |
| • Power to admit additional grounds of appeal       | Yes | Yes |
| • Power to admit additional evidence                | Yes | Yes |
| • Power to grant stay                               | Yes | Yes |
| • Power to Award cost (in case of frivolous appeal) | No  | Yes |
| • Power to reject appeal                            | Yes | Yes |

### › Section 264: Revision of other order

- CIT/PCIT may either on his own motion or on an application made by assessee, call and examine the records of any proceeding, in which an order other than referred u/s 263 has been passed by A.O and CIT may pass such revisional order u/s 264 as he deems fit.
- The CIT can revise the order on his own motion within 1 year from date of passing of the order of A.O
- If assessee applies for revision, then he can make an application within 1 year from the date of receiving a copy of order by Assessee

- If assessee has asked for revision the CIT has to pass an order **within one year** from the end of F.Y in which application was made by assessee
- Order which is **prejudicial to the interest of assessee** cannot be passed under the section
- Appeal **cannot** be filed against order u/s 264
- Assessee can apply for revision u/s 264 only if: -
  - The limit to file CIT appeal has been expired **(30 days)**
  - 'OR'**
  - Assessee waived his right of appeal in writing

Remarks

# INCOME TAX

## AMENDMENTS

### Finance Act, 2021

#### Relevant for:

CS – Executive: JUNE/DEC. 2022

CA – INTER: MAY/NOV 2022

CMA – INTER: JUNE/DEC. 2022

Compilation by

**CA Vivek Gaba (FCA, CCTP & B.Com)**

# INDEX

<b>CH. No</b>	<b>Chapter Name</b>	<b>Page No</b>
1.	Basics of Income Tax	3
2.	Return of Income	3
3.	Residential Status	7
4.	Salary	8
5.	PGBP	12
6.	Capital Gains	18
7.	Other Sources	20
8.	Deductions	22
9.	TDS/TCS	23
10	Other Amendments by FA, 2021	28

# CHAPTER-1

## BASIC OF INCOME TAX

### Amendment: 1

For May/June or Nov/Dec. 2022 Exams: **PY 21-22 & AY 22-23 is Relevant**

### Amendment: 2

#### Tax Rates for Domestic Company

If the total turnover of gross receipt of the company in <b>P.Y. 2019-20</b> ≤ ₹ 400 Crore	25% of Total Income
In any other case	30% of Total Income

**Note:** Other Tax Rates & Provisions are same as December 2021

# CHAPTER -2

## RETURN OF INCOME

### Amendment: 1

#### 1. Sec.139(1) Meaning of due date: Due Date Means-

	Assessee	Due Date
(i)	Where the assessee, other than an assessee referred to in clause (ii), is- a. A company b. A person (other than a company) whose accounts are required to be audited under the Income-tax Act, 1961 or any other law in force; or b) A partner of a firm whose accounts are required to be audited under the Income Tax Act, 1961 or any other law for the time being in force <b>or the spouse of such partner if the provisions of section 5A applies to such spouse.</b>	<b>31<sup>st</sup> October</b> of the A.Y.

(ii)	In the case of an assessee <b>including the partner of the firm or the spouse of such partner (if the provisions of section 5A applier to such spouse), being such assessee</b> who is required to furnish a report referred to in section 92E.	<b>30<sup>th</sup> November</b> of A.Y.
(iii)	In the case of any other assessee.	<b>31<sup>st</sup> July</b> of A.Y.

### Apportionment of income between spouses governed by Portuguese Civil Code (Section 5A):

(1) Where the husband and wife are governed by the system of community of property (known under the Portuguese Civil Code of 1860 as "COMMUNIAO DOS BENS") in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu, the income of the husband and of the wife under any head of income shall not be assessed as that of such community of property (whether treated as an association of persons or a body of individuals), **but such income of the husband and of the wife under each head of income (other than under the head "Salaries") shall be apportioned equally between the husband and the wife** and the income so apportioned shall be included separately in the total income of the husband and of the wife respectively, and the remaining provisions of this Act shall apply accordingly.

(2) Where the husband or, as the case may be, the wife governed by the aforesaid system of community of property has any income under the head "Salaries", such income shall be included in the total income of the spouse who has actually earned it.

### Amendment: 2

### Sec.139(4) BELATED RETURN

- 1) **Furnishing of belated return of income:** Any person who has **not furnished a return** within the time allowed to **him under section 139(1)**, may furnish the return for any previous year at any time -
- Before 3 months prior** to the end of the relevant assessment year; (i.e. 31.12.2022 for PY 21-22) or
  - Before the completion of the assessment, whichever is **EARLIER**.

#### Example: 1

For A.Y 2022-23, No return of income has been filed and no assessment has been made under section 144. Upto what time can be the assessee file the return of income?

Solution: Return of income under section 139(4) can be filed upto 31<sup>st</sup> December, 2022 subject to Section 234F.

#### Example: 2

For A.Y 2022-23, No return of income has been filed. The assessing officer makes a best judgement assessment under section 144 on 30<sup>th</sup> November, 2022/31<sup>st</sup> December, 2022/31<sup>st</sup> March 2022. Upto what time can be the assessee file the return of income?

Solution: Return of Income u/s 139(4) could have been filed upto 20.11.2022/30.12.2022/31.12.2022 subject to section 234F.

## Amendment: 3

### REVISED RETURN [SECTION 139(5)]

If any person having furnished a return under **section 139(1) or section 139(4)**, discovers any omission or any wrong statement therein, he may furnish a revised return AT ANY TIME

- a) **Before 3 months prior** to the end of the relevant assessment year; or
- b) Before the completion of the assessment, Whichever is **EARLIER**.

**Example 1:** For Assessment year 2022-23, the due date of filing of ROI was 31-10-2022 and ROI is filed on 31-10-2022 declaring an income of 4,00,000. Revised return is filed on 31-12-2022 declaring loss of 7,30,000. Can the loss be carried forward?

#### **Solution:**

As per the judgement of Dhampur Sugar Mills Ltd., revised return under section 139(5) substitutes the original return from the date original return was filed. Hence, revised return filed on 31.12.2022 substitutes the original return filed on 31.10.2022 and is deemed to be filed on 31.10.2022. Thereby, as per the provisions of section 80 read with section 139(3), the loss of 7,30,000 shall be carried forward.

**Example 2:** If in the above question, the original return was filed on 10.11.2022 instead of 31.10.2022, whether the loss can be carried forward?

#### **Solution:**

The return filed under section 139(4) can be revised under section 139(5) Therefore, revised return filed on 31-12-2022 is valid. As per Dhampur Sugar Mills Ltd., the revised return substitute the original return from 10-11-2022 and is deemed to be filed on 10-11-2022 As per the provision of section 80 read with section 139(3) the loss cannot be carried forward.

**Example 3:** For the assessment year 2022-23, the due date of filing of ROI was 31.10.2022 and ROI is filed on 10.11.2022 declaring a loss of Rs. 2,50,000. Revised return is furnished on 31.12.2022 declaring a loss of Rs. 7,00,000. Comment

#### **Solution:**

The return filed on 10.11.2022 is a return filed u/s 139 (4) and as per the provisions of section 80 read with section 139(3), the loss of Rs. 2,50,000 cannot be carried forward. Further the return filed on 31.12.2022 is a valid return, as per SC in Kumar Jagdish Chandra Sinha amendment made by Finance Act, 2016. As per Dhampur Sugar Mills Ltd., the revised return is deemed to be filed on 10-10-2022 As per the provision of section 80 read with section 139(3) the loss of Rs. 7,00,000 cannot be carried forward

**Example 4:** For the assessment year 2022-23, the due date of filing of ROI was 31.10.2022 and the return is not filed up to 31.10.2022 The Assessing officer issues notice under section 142(1)

**Case 1:** On 1-1-2023 and ask the assessee to file the return on 31-1-2023. Assessee files the return on 31-1-2023/10-2-2023.

#### **Solution:**

The late return has been filed after the period given under section 139(4) and therefore, cannot be revised. This is because the law provides that a return filed under section 139(1) or 139(4) can be revised.

## Amendment: 4

## Sec.234F Fees for Delay in filling ROI

Where a person who is required to file ROI u/s 139 fail to do so within prescribe time u/s 139(1), he **shall pay by way of fees, a sum of Rs.5000** However if Total Income of the person does not exceed 5L the Fees payable shall be 1000.

Space for Example:

Amendment: 5

## Sec.234H Fees for default relating to Intimation of AADHAR Number

Where a person required to intimate his Aadhar number u/s **139AA fails** to do so **before 30<sup>th</sup> September 2021**, he shall be liable to pay such fees as may be prescribe, at the time of making intimation u/s 139AA after 30<sup>th</sup> Sep 2021. However, such **fees shall not exceed Rs.1000.**

Space for Example:

# Chapter 3

## Residential Status

### Amendment: 1

Significant economic presence [Explanation 2A to section 9(1)(i)]

Significant economic presence of a non-resident in India shall also constitute business connection in India.

	<i>Nature of transaction</i>	<i>Condition</i>
(a)	<i>in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India</i>	<i>Aggregate of payments arising from such transaction or transactions during the previous year should exceed ₹2 crores.</i>
(b)	<i>systematic and continuous soliciting of business activities or engaging in interaction with users in India</i>	<i>The number of users should be at least 3 lakhs.</i>

Further, the above transactions or activities shall constitute significant economic presence in India, whether or not, —

- (i) the agreement for such transactions or activities is entered in India;
- (ii) the non-resident has a residence or place of business in India; or
- (iii) the non-resident renders services in India:

However, where a business connection is established by reason of significant economic presence in India, only so much of income as is attributable to the transactions or activities referred to in (a) or (b) above shall be deemed to accrue or arise in India.

### Space for Example: