

Precautions in filing ITR

&

Updated Return

(As per the Finance Act 2022)



CA. IP JITENDER WADHWA

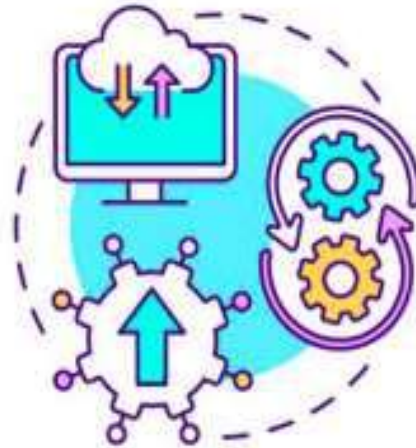
(M. COM, FCA, IP, FAFD)

CA HARIOM BHATI

(M.COM, FCA, CS)

MOB. 9899212872

EMAIL: info@cabhatiwadhwa.com



All About Updating

ITR Under Section 139(8A)



PROVISIONS FOR FILING OF UPDATED RETURN

Reasons for making Amendments

Section 139 of the Act is related to the provisions for filing of Income Tax Returns by Taxpayers.

Section 139

139(1): Time Limit for filing Mandatory and Voluntary ITR

139(4): Belated Return

139(5): Revised Return

(a)
For companies whose accounts are required to be audited

31st October of the A.Y

(b)
Assessee who is required to furnish a report U/s 92E


30th November of the A.Y

(c)
For any other assessee

31st July of the A.Y

3 months prior to the end of the relevant A.Y

3 months prior to the end of the relevant A.Y

- ▶ The additional time limit for filing the revised/ belated return may not be adequate when we factor in utilization of huge information.
 - ▶ Hence, it is decided that the taxpayers may be given some more time under the Act to file particulars of their income for a previous year.
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INCOME TAX (UPDATED) RETURN



ELIGIBILITY TO FILE THE UPDATED RETURN

- ▶ **Omission or error** in filing the original return/ Belated return/Revised return.
- ▶ And such omission or error results in **disclosure of additional income** and there by additional Income tax liability.
- ▶ And such return needs to be filed within **2 years from the end of such relevant A.Y**

REASONS FOR FILING UPDATED RETURNS (FORM-U)

Return previously not filed

Income not reported correctly

Wrong heads of income chosen

Reduction of carry forward loss

Reduction of unabsorbed depreciation

Reduction of tax credit u/s 115JB/115JC

Wrong rate of tax Others

SECTION 139(8A): UPDATED RETURN

[INSERTED BY FINANCE ACT 2022]

- ▶ Any person, **whether or not he has furnished a return under** sub-section (1) or (4) or (5), for an A.Y, may furnish an updated return of his income or the income of any other person in respect of which he is assessable under this Act, for the previous year relevant to such A.Y, in the **prescribed form**, verified in such manner and setting forth such particulars as may be prescribed, at any time **within 24 months from the end of the relevant A.Y:**

SECTION 139(8A) NOT TO APPLY IN CERTAIN CASES

[FIRST PROVISIO TO SECTION 139(8A)]

- ▶ The provision of section 139(8A) shall not apply, if the updated return,–

(a)

Is a return of loss

(b)

Has the effect of decreasing the total tax liability furnished under sub-section (1) or (4) or (5)

(c)

Results in refund or increases the refund due on the basis of return furnished under sub-section (1) or (4) or (5)

PERSONS NOT ELIGIBLE TO FURNISH AN UPDATED RETURN U/S 139(8A) IN CERTAIN CASES *[SECOND PROVISO]*

A person shall not be eligible to furnish an updated return, if: –

- (a) **search** has been **initiated U/s 132** or books of account, other documents or any **assets are requisitioned U/s 132A** in the case of such person, or
- (b) a **survey** has been conducted U/s **133A**, *other than subsection (2A)* of that section, in the case such person, or

- (c) a **notice has been issued** to the effect that any money, bullion, jewellery or valuable article or thing, **seized or requisitioned U/s 132 or 132A** in the case **of any other person belongs to such person**, or

- (d) a notice has been issued to the effect that any **books of account or documents, seized or requisitioned U/s 132 or 132A** in the case of any other person, **pertain or pertains to**, or any other information contained therein, **relate to, such person.**

UPDATED RETURN NOT TO BE FILED BY ANY PERSON FOR THE RELEVANT A.Y IN CERTAIN CASES *[THIRD PROVISIO]*

- ▶ No updated return shall be furnished by any person for the relevant A.Y, where,
 - a. an **updated return has been furnished** by him for the relevant assessment year
 - b. any proceeding for **assessment** or **reassessment** or **re-computation** or **revision** of income under the Act is pending or has been completed for the relevant assessment year, or

- (c) the **A.O 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

- (d) information for the relevant assessment has been received under an agreement referred to in **sections 90 or 90A** in respect of such person and the same has been communicated to him, prior to the date of his filing of updated return, or
- (e) 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 updated return, or
- (f) he is a person or belongs to a class of persons, as maybe notified by the Board in this regard.

➤ Updated return to be furnished for each subsequent previous year in certain cases:

If

- ▶ The loss of any part thereof carried forward, or
- ▶ Unabsorbed depreciation carried forward, or
- ▶ Tax credit carried forward

is to be reduced for any subsequent previous year as a result of furnishing of return of income under this sub-section for a previous year, an updated return shall be furnished for each such subsequent year.

Where earlier return furnished was a return of loss, an updated return can be furnished if such, updated return is a return of income.

Updated return will be defective if not accompanied by the proof of payment of tax as required under the proposed section 140B.



SECTION 140B: TAX ON UPDATED RETURN

[INSERTED BY FINANCE ACT 2022]


- ▶ Where no return of income under sub-section (1) or (4) of section 139 has been furnished by an assessee, the tax payable shall be computed after taking into account the following:-
 - (i) the amount of tax, if any, already paid as advance tax;
 - (ii) any tax deducted or collected at source;
 - (iii) any relief of tax claimed under section 89;

(vi) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;

(v) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and

(vi) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD. Such updated return shall also be accompanied by proof of payment of such tax, additional tax, interest and fee.

- ▶ Where return of income under sub-section (1) or (4) of section 139 has been furnished by an assessee, the tax payable shall be computed af-ter taking into account the following:-
 - (i) The amount of relief or tax, referred to in sub-section (1) of section 140A, the credit for which has been taken in the earlier return;
 - (ii) **TDS or TCS**, which is taken into account in computing total income and **which has not been claimed** in the earlier return;

- (iii) any relief of tax or deduction of tax claimed U/s **90 or 91** on account of tax paid in a country outside India on such income which has not been claimed in the earlier return;
 - (iv) any relief of tax claimed U/s **90A** on account of tax paid in any specified territory outside India referred to in that section on such income which has not been claimed in the earlier return;
 - (v) any tax credit claimed, to be set off in accordance with the provisions of section 115JAA or section 115JD, which has not been claimed in the earlier return
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ADDITIONAL TAX PAYABLE:

If updated return is filed

- ▶ **within 12 months** from the end of the relevant assessment year , the additional tax/ penalty is **25%** of **such computed tax and interest**
- ▶ **between 12 months to 24 months** from the end of relevant assessment year, the additional tax/ penalty is **50%** of **such computed tax and interest**

[This levy of additional tax is over and above the regular Income tax and Interest]

| Particulars | Case 1: Where the updated return is filed on or before 31 March 2024 (i.e., 12 months from the end of the AY) | Case 2: Where the updated return is filed on or after 1 April 2024 but on or before 31 March 2025 (i.e., 24 months from the end of the AY) |
|---|---|--|
| Aggregate tax and interest liability (as per the updated return) | ₹50,000 | ₹50,000 |
| Additional tax payable: • Case 1: 25% of 50,000 • Case 2: 50% of 50,000 | ₹12,500 | ₹25,000 |

BENEFITS OF UPDATED RETURN FOR TAXPAYERS

- ▶ **Avoid penal consequences** for the **under reporting of income** identified during the assessment or reassessment proceedings
- ▶ Relief from further prosecution proceedings and thereby providing the **opportunity to reduce the litigation.**

PRECAUTIONS IN FILING I.T.R



SECTION 44AD

- ▶ The presumptive taxation scheme of section 44AD is designed to give relief to small taxpayers engaged in any business (except the business of plying, hiring or leasing of goods carriages referred to in section 44AE).

However, if a person opts out of this at any time he cannot avail the benefit of the scheme of Presumptive Taxation for the next 5 years. The same has been summarised in the table below

| Particulars | Presumptive Taxation under Section 44AD for Business |
|---------------------------------|--|
| AY 2017-18, 2018-19, AY 2019-20 | Opts for Presumptive Taxation |
| AY 2020-21 | Does not opt for Presumptive Taxation |
| AY 2021-22 to AY 2025-26 | Cannot opt for Presumptive Taxation |

PRECAUTIONS TO BE TAKEN WHILE ITR FILING UNDER THE PRESUMPTIVE SCHEME (44AD)

More than 1 Business

- If assessee is carrying on more than 1 business, the total turnover of all the businesses should be taken into account.

Business + Profession

- if the assessee is carrying on business as well as profession, Section 44AD can be applied on the income earned from business. Computation of Income earned from Profession would be computed as per the normal provisions of the Act.

Deduction under chapter VI-A

- An assessee declaring his income as per presumptive taxation under section 44AD can also claim tax benefit of deductions under chapter VI-A

SECTION 44ADA

- ▶ A person can opt in and opt out of Section 44ADA at any time without any restriction. Unlike Section 44AD for Business, a professional can opt in and opt out at any time without the 5 year restriction. This has been explained in the below table:-

| Particulars | Presumptive Taxation under Section 44ADA for Professionals |
|-------------|--|
| AY 2017-18 | Opts for Presumptive Taxation |
| AY 2018-19 | Does not opt for Presumptive Taxation |
| AY 2019-20 | Can again opt for Presumptive Taxation. No Restriction |

PRECAUTIONS TO BE TAKEN WHILE ITR FILING UNDER THE PRESUMPTIVE SCHEME (44ADA)

- ▶ Under the presumptive scheme, the Income Tax Department will not ask you to justify the taxable profits declared for the financial year. The department will not ask for any proof of expenses incurred by you.
But the A.O may ask you to substantiate your gross receipts or turnover. So, a proper record of sales invoices raised by you during the financial year should be kept in safe custody.

- ▶ Further, you should also keep **a proper record of cash transactions** (receipts & payments) as the department can also verify the cash balances held by you at the end of the financial year.

- ▶ In addition, a **list of all creditors & debtors** at the end of the financial year should also be prepared and kept in records so that it may be produced before the Assessing Officer if asked by him.

JUDGEMENTS



Where the assessee files its return u/s 44AD, it is not under obligation to explain individual entry of cash deposits.

CIT Vs. Surinder Pal Anand (Punjab & Haryana High Court) ITA No. 156 of 2010 (29.06.2010)

Cases Supporting CIT Vs. Surinder Pal Anand

Kapil Dey, Kolkata vs Assessee dated 25.11.2011 (ITA Nos. 854, 855 & 856/kol/2010)

Virender Kumar vs ITO 1(1) Alwar dated 31.03.2021 (ITA No. 1100/JP/2019)

*Judgement against CIT Vs.
Surinder Pal Anand (Punjab &
Haryana High Court)*

Naresh Kumar v. CIT (High Court Of
Punjab And Haryana) Sr. No. 205
I.T.A. No. 382 of 2015 Dated
27.09.2016

Smt. Kavita Chandra Vs CIT(A)
(Punjab Haryana High Court)
ITA No.421 of 2016 (O&M) Dated
07.03.2017



TEAM MEMBERS

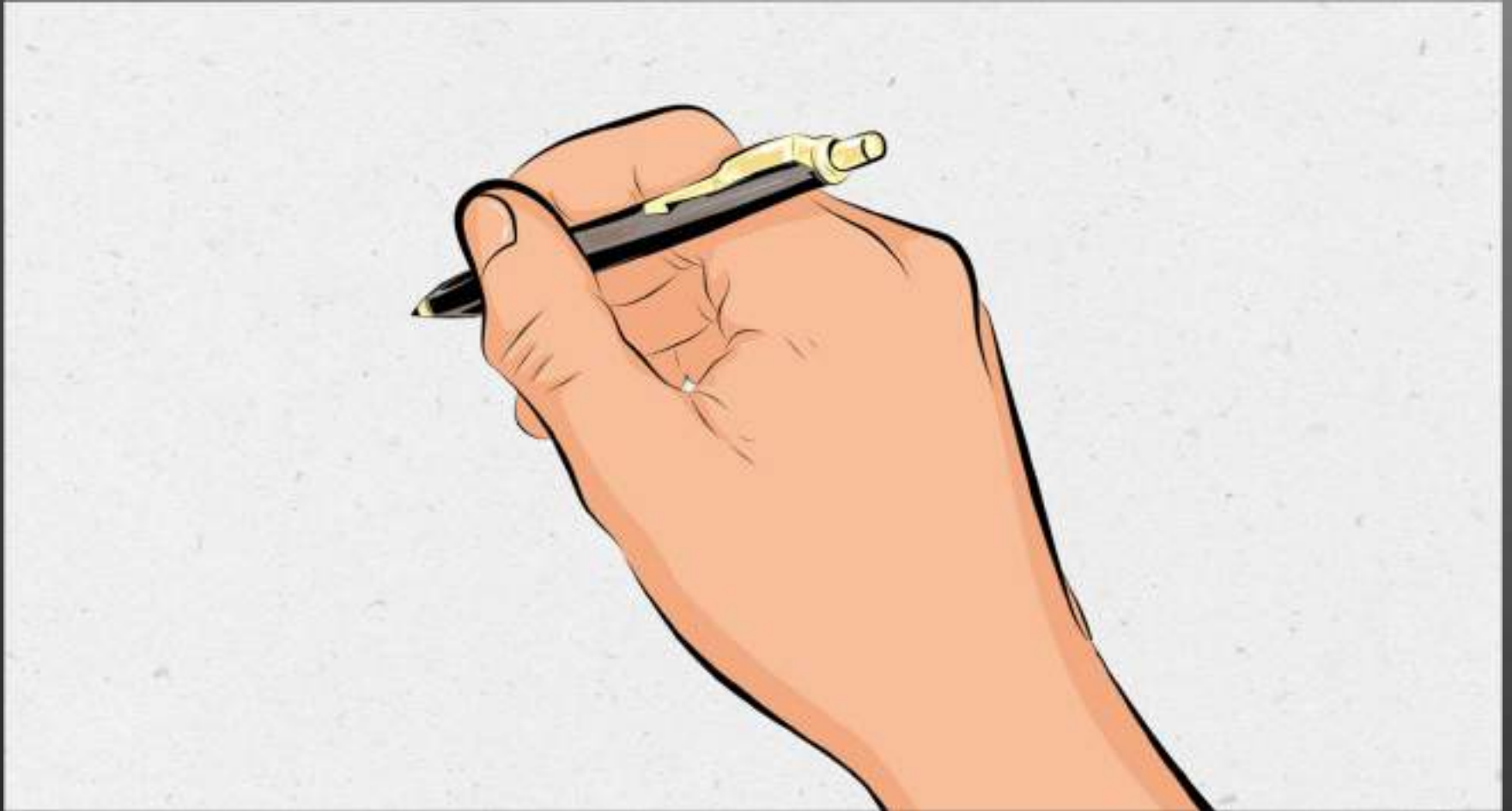
CA Hariom Bhati:9811406766

CA Jitender Wadhwa:9899212872

Adv. Surender Sharma: 9355429835

Adv. Dinesh Bhati: 9717206775

Adv. Devender Solanki: 9811749522



MOB. 9899212872

EMAIL: info@cabhatiwadhwa.com