

# Theory Notes

## Q1. Write a short note on advance payment of tax.

Ans. 'pay as you earn' scheme means that assessee has to pay tax simultaneously along with the earning of his income. This tax is paid on the current year's income in the same year. Therefore, it is paid as advance and it is called 'Advance payment of tax'. Under the scheme of advance payment of tax, every income (including capital gains, winning from lotteries, cross word puzzles etc.) is liable for payment of advance tax.

The important provisions of advance payment of income tax are as follows:-

1. **LIABILITY TO PAY ADVANCE TAX**:- It is obligatory to pay advance tax in every case where the advance tax payable is Rs. 10,000 or more. In other words, if estimated income tax liability is Rs.10,000 or more than it is compulsory for the assessee to deposit advance tax. E.g. Mr. X is liable to pay income tax Rs. 20,000 during the previous year 2015-16. In this case, Mr. X has required paying 30% of Rs. 20,000 i.e.-Rs. 6000 on or before 15.9.2015, Rs. 60% of total i.e. Rs. 6000 on or before 15.12.2015 and balance i.e. 8000 to be paid on or before 15.3.2016.
2. **INSTALLMENTS OF ADVANCE TAX AND DUE DATES U/S 211**:-

For non-company assessee

On or before September 15 of the previous year	Up to 30% of advance tax
On or before December 15 of the previous year	Up to 60% of advance tax, as reduced by the amt, if any, paid in the earlier instalment.
On or before March 15 of the previous year	The whole amt of advance tax as reduced by the amt, if any, paid in the earlier instalment

- ❖ **Any payment of advance tax made before March 31** shall also be treated as advance tax paid. The assessee will however, be liable to pay interest on the late payment.
  - ❖ **If the last day for payment of any instalment of advance tax** is a day on which the receiving bank is closed then the assessee can make the payment on the next immediately following working day and in such a case interest u/s 234B and 234C would not be charged.
  - ❖ After making the payment of 1<sup>st</sup> 2<sup>nd</sup> installment of advance tax, the assessee can increase/decrease the amount of remaining installments of advance tax in accordance with his revised estimates of current income. In this case, he will have to pay interest for short payment of earlier installments.
3. **APPLICABILITY OF THIS SCHEME**:- The scheme of advance tax is applicable for all types of assessee whose estimated total income tax liability is equal to Rs. 10,000 or more during the relevant previous year. In other words, the assessee may be individual, HUF, firm, AOP/BOI or company etc. In short, assessee can not avail any exemption from the payment of advance income tax. He is liable to pay the amount of advance tax if income tax liability of the assessee Rs. 10,000 or more.
  4. **NON APPLICABILITY OF ADVANCE TAX FOR BUSINESS COVERED U/S 44AD**:- However, if an assessee engaged in the business of and covered under presumptive basis u/s 44AD, then such an assessee is not required to pay any advance tax. In other words, if an assessee has assessed his business on presumptive basis covered under section 44AD, then he is not required to pay advance income tax.
  5. **NON APPLICABILITY OF ADVANCE TAX FOR RESIDENT SENIOR CITIZEN**:- If a resident senior citizen have any income other than business income, then such resident senior citizen is not required to pay advance income tax. Resident senior citizen here means who is of the age of 60 years or more at any time during the previous year.

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6. **COMPUTATION OF ADVANCE TAX**:- An assessee can calculate his advance tax liability in the following manner:-

1	First of all, determine the residential status i.e. whether the assessee is resident and ordinarily resident, resident but not ordinarily resident or non-resident.
2	Estimation of income under the five heads i.e. salary, income from house property, business income, capital gain and income from other sources.
3	Application of provisions relating to clubbing of income.
4	Set off of past losses.
5	Calculation of estimated gross total income step (2) + step (3) – Step (4)
6	Claiming of estimated deductions u/s 80
7	Calculation of estimated total income as step 5 – step 6
8	Calculation of estimated tax on the estimated total income
9	Claiming deduction of estimated TDS
10	Determining estimated net tax

If the amount of net tax as per step 10 is Rs. 10,000 or more, then such assessee is liable to pay advance tax in installments. If the amount of net tax as per step 10 is less than Rs. 10,000, then such assessee is not required to pay any amount of advance tax.

7. **PROVISION REGARDING PAYMENT OF ADVANCE TAX**:- The following provisions are applicable regarding the payment of advance tax.
- A. **VOLUNTARY PAYMENT OF ADVANCE TAX**:- It is the duty of every assessee whether or not assessed previously to tax, then he is required to pay installments of 'advance tax on the respective due dates. E.g. if Mr. Rajan had income Rs. 2,50,000 in the previous year 2014-15, therefore no amount of tax had been paid by Mr. Rajan for the previous year 2015-16. But in the previous year, his estimated income tax liability arises Rs. 15,000, then in that situation, Mr. Rajan has compulsory to pay advance tax during the previous 2015-16 in the installments.
- B. **INCREASE OR DECREASE IN ADVANCE TAX**:- Assessee is Scanned Authorized to increase or decrease the amount of each installment of advance tax in accordance with his estimate of his current income.
- C. **POWER OF ASSESSING OFFICER**:- If an assessee had not been paid any advance tax of the last previous year and his income has been assessed by way of regular assessment, then in that case AO may order to make the payment of advance tax to the assessee in the month of March of the relevant previous year. E.Q. Mr. Aneesh had income tax liability of Rs. 25000 for the previous year 2014-15 but assessee had not been deposit any amount of advance tax during the relevant previous year 2014-15 and the regular assessment has been done by the AP. In this situation, AO can make order to pay the amount of advance tax to Mr. Aneesh in the month of march 2016 for the previous year 2015-16.
8. **OTHER PROVISIONS**:- There are some general provisions applicable on the payment of advance tax.
- **PAYMENT OF ADVANCE TAX BETWEEN 16th MARCH AND 31<sup>st</sup> MARCH OF THE PREVIOUS YEAR**:- If an assessee has paid tax after 15th march but on or before the 31' march of the previous year, then such paid tax shall be considered as advance payment of tax. But the assessee has liable to pay interest @ 1% p.m. for one month i.e. for the month of March.
  - **LAST DAY OF PAYMENT OF ADVANCE TAX IS A HOLIDAY**:- If there is holiday on the last day of the payment of advance tax, then next working day will be considered as last day for the

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payment of advance payment of tax. E.g. if there is Sunday as on 15th march, 2016, then last day of payment of advance tax in this case will be 16th march, 2016.

- **PAYMENT OF ADVANCE TAX BY CHEQUE**:- If an assessee has deposited his advance tax by cheque on due date of advance tax, then such payment of cheque will be considered as advance payment of tax. It is immaterial whether the cheque has been presented for the payment in the assessee bank after the due date of advance tax. It is more important that the said cheque must not be dishonored.
- **INTEREST ON DEFAULT IN PAYMENT OF ADVANCE TAX U/S 234B**:- If an assessee fails to pay 90% of assessed tax as advance tax, then he shall be liable to pay simple interest @1% p.m. or a part of the month of default. The interest will be calculated from the 1<sup>st</sup> day of April of the assessment year.
- **INTEREST ON DEFERMENT OF ADVANCE TAX U/S 234C**:- If an assessee fails or short payment of installments of advance tax, then he shall be liable to pay simple interest @1% p.m.

### **Q2. Discuss briefly best judgement assessment.**

Ans. Assessment refers to evaluation or judgement. As per the income tax act it refers to evaluation of income. It includes various procedures. Assessment includes determination of the amount of taxable income as well as amount of tax payable by an assessee.

**SECTIONS 144 OF THE INCOME TAX ACT: BEST JUDGEMENT ASSESSMENT**:- The term best judgement assessment is very important from income tax point of view. This is the most important tool in the hands of the AO. It means income tax is assessed by the assessing officer as per his best opinion, guess work, knowledge and documentary evidences available with him. If an assessee fails to comply with the notices, the income tax act has given wide powers to AO to deal with such situation.

This assessment is done by the assessing officer at that time when assessee does not co-operate with the assessing authority. In other words, when documentary proof and explanatory notes of the source of income are not been provided by the assessee during 'the proceeding of assessment of income. It is also known as ex-parte assessment. It is made by AO on his own accord acting honestly and with utmost good faith without any discrimination to the assessee. This type of assessment is made when the assessee does not co-operate with the AO. The idea of this type of assessment is not to punish the assessee for his non-cooperation, but to make the assessment on the basis of the information, and materials the AO has gathered. In short, in the process of making assessment of an assessee, the AO calls or certain information through notices from such assess. To know the correct income or loss of the an assessee, such information may be necessary. In case an assessee fails to comply with such notices, the act has given wide powers to the AO to deal such cases. In this way, AO makes assessment of such assessee as per his opinion, knowledge and available record with him. Therefore, it is also called as ex-parte assessment. In other words, in a best judgement an assessing officer makes an assessment based on his best reasoning.

It must be noted that the assessee shall be given an opportunity of being heard before the AO make the assessment of the total income or loss to the best of his judgement and determine the sum payable by the assessee on the basis of such assessment.

**BASIS FOR BEST JUDGEMENT ASSESSMENT**:- A best judgment assessment as discussed earlier is made based on non-compliance of the provisions of the IT act. Therefore in the absence of furnished proof for assessment of the income the assessing officer is free to choose any basis which is substantial and material to the case. An element of guess work is bound to be there in the best assessment and the assessing officer for that purposes is the best person to deal with it. The research in this section will attempt to discuss the various instances in which a best judgement assessment might take place. It is pertinent to be advised in this respect that when a return is filed though belatedly the AO is not liberty to ignore it and still applies his best judgement.

There are two types of best judgement assessment.

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1. Compulsorily, best judgement assessment u/s 144
2. Discretionary best judgement assessment u/s 145

1. **COMPULSORILY BEST JUDGEMENT ASSESSMENT U/S 144**:- It is done when the assessing officer finds that there is an act amounting to non-cooperation on by the assessee or where the assessee is found to be a defaulter in supplying information to the department. In other words, such type of best judgment assessment is done only in those cases, when the assessee fails to comply the provisions of the act. Compulsorily best judgement is done by the assessing officer u/s 144 in the following cases.
  - a. Fails to file the return of income u/s 139(1)
  - b. Fails to file the revised return of income u/s 139(4).
  - c. Fails to comply with all the terms of a notice issued u/s 142(1)
  - d. Fails to comply with the directions issued u/s 142(2A) (failure to get this accounts audited)
  - e. Fails to comply with all the terms of a notice issued u/s 143(2) (failure to produce books of account)

This section provides that the assessing officer shall make the assessment of assessee's total income or loss to the best of this judgement after taking into account all relevant material which he had gathered and after giving the assessee's an opportunity of being heard.

**REMEDIES FOR THE ASSESSEE AGAINST THE ORDER PASSED BY AO UNDER BEST JUDGEMENT ASSESSMENT**:- The aggrieved party has two opinions open before him. The first one is to obey the order of AO and pay the tax to the assessing authority. The second opinion is to take remedial measurement:-

1. **Filing up an application with the assessing officer for the cancellation of the best judgement assessment**:- Within 1 month of the service of notice of demand u/s 144, the assessee can apply to the AO for the cancellation of such assessment. Section 146 empowers the AO to cancel the best judgement assessment on the following grounds:-
  - a. The assessee was prevented by sufficient cause from making the return required u/s 139, or "
  - b. That he did not receive the notice issued u/s 142(1) and 142(3) or
  - c. That he did not have reasonable opportunity to comply or was prevented by sufficient cause from complying with the notice issued u/s 142 (1) and 143(2).

Every application made for cancellation shall be disposed of within 90 days from the date of receipt of application by assessing officer. If the assessing officer refuses to cancel the best judgement assessment, then the income tax act has given a right to the assessee to file an appeal against the best judgement assessment. It is presented before the deputy commissioner (appeals) and against his (DC) orders, to the commissioner (appeals) and appellate tribunal. If any question of law arises, the assessee can also knock the doors of high court and then supreme court

2. **Filing of an appeal against such assessment with the higher authority**:- This remedy is not helpful as the assessee cannot produce any new evidence before the appellate authority as he had failed to produce such evidence before AO.

**The limit for completion of best judgement assessment**: - It shall be completed within two years from the end of the relevant assessment year.

2. **DISCRETIONARY BEST JUDGEMENT ASSESSMENT U/S 145**:- It is done in cases where the assessing officer is dissatisfied with the authenticity of the accounts given by the assessee or where no regular method of accounting has been applied by the assessee. Section 145(3) empowers the AO to make the discretionary type of best judgement assessment. This type of assessment may be made under the following two types of cases:-
  - a. Where AO is not satisfied about the correctness or completion of the books of accounts or
  - b. When no method of accounting has been regularly employed by the assessee.

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It is up to the discretion of the assessing officer whether to make a best judgement assessment or a regular assessment u/s 143(3). But once this type of assessment is made and tax is determined, the assessee will have no opinion. He can file an appeal with the higher authority against the best judgement assessment. The AO has no power to refuse to register the firm or cancel the registration, if the assessee is a firm.

In short, a mandatory best judgement is done in the event of failure to furnish requisite books of accounts by the assessee and further the discretionary assessment where the AO is under the firm belief that the records are not true or the same are not admissible by him or rejected on any of the grounds which the AO deems fit for the case. However this power is not absolute and there is an imperative understanding that the actions of the assessee authority will be honestly and diligently performed. Further the assessee is given the power to furnish reasons for failure to provide adequate reasons for the non-disclosure or concealment of the material documents and as to why an assessment should not be made according to the best understanding of the assessing authority.

### Q3. Write a short note on permanent account number u/s 139A.

**Ans.** The definition of permanent account number is very important from an income tax point of view. Permanent account number is allotted by the income tax department to each assessee. PAN is allotted only one time to the assessee. Assessee must have to write allotted PAN on each and every income tax return and all correspondence with the income tax department. Assessee cannot file return of income without PAN. It is a ten-digit alphanumeric number. First five digits are alpha and four digits are numeric and the last alpha in each PAN. PAN does not change with the change of residential address or business place.

The permanent account number under the new series has been defined to mean a number, which will have ten alphanumeric characters to be issued on a laminated card.

1. **PERSON REQUIRED TO MAKE APPLICATION FOR ALLOTMENT OF PERMANENT ACCOUNT NUMBER:-**
  - a. **Total income:** Any person whose total income exceeds the maximum amount not chargeable to tax.
  - b. **Business assessee:** Any person carrying on business or profession whose turnover/gross receipts exceed Rs. 500000 in previous year.
  - c. **Trust society:** Any person who is required to furnish a return of income as a trust or society u/s 139(4A).
  - d. **Obligation to pay tax/duty:** Any person by whom tax is payable under income tax act, or any tax or duty is payable under any other law, including importers and exporters whether any tax is payable by them or not.
  - e. **AO's discretion:** The assessing officer may allot to any other person by whom tax is payable even without an application.
2. **ONE PAN ONLY:-** No person who has already been allotted a PAN under the new series shall apply, obtain or possess another PAN.
3. **THE PAN SHOULD BE QUOTED IN THE FOLLOWING TRANSACTIONS:-**
  - a. **Matters relating to interest of revenue:** Return/correspondence/tax challan/any other matter in the interest of revenue.
  - b. **Transactions in assets:**
    - **Sale or purchase of immovable property** involving amounts in excess of Rs. 5,00,000.
    - Sale or purchase of motor vehicle other than two wheeler.
  - c. **Transactions with banks**
    - Time deposit in excess of Rs. 50000 with bank or post office saving bank.
    - Opening of a bank account.
    - Purchase of pay order or demand draft or banker's cheque of an amount of Rs. 50000 or more by depositing cash on any day.

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- Deposit of cash in any bank account of Rs. 50000 or more on any day.
- d. **Transactions in securities/bonds/units:**
- Sale or purchase of securities exceeding Rs. 100000.
  - Purchase of shares from company for Rs. 50000 or more during r.p.y.
  - Purchase of mutual funds for an amt of Rs. 50000 or more.
  - Purchase of bonds of debentures of company of Rs. 50000 or more.
  - Purchase of RBI bonds of Rs. 50000 or more.
- e. **Specific expenses, applications and other documents:**
- Telephone applications, all TDS certificates, all TCS certificates.
  - All sales tax registrations, application for credit cards.
  - Payment of hotel bill exceeding Rs. 25000.
  - Expenses in cash exceeding Rs. 25000 towards foreign travel.
4. **THE BOARD HAS THE POWERS TO NOTIFY THE FOLLOWING:-**
- Prescribed form, categories to transactions to be quoted.
  - Categories of business transactions to be quoted, classes of person to whom apply.
  - Form for declaration of not having PAN.
  - Manner in which quoted, time and manner in which intimated.
5. **THE PROVISIONS OF SECTION 139A SHALL NOT APPLY TO THE FOLLOWING CLASS OR CLASSES OF PERSONS:-**
- Persons who have agricultural income and who are not in receipt of any other income chargeable to income tax provided that a declaration in form no. 61 filed by such persons.
  - Non-resident as defined in u/s 2(30).
6. **CONSEQUENCES OF NON-APPLICATION OF PAN:-** Failure to comply with provisions of sec.139A or quoting PAN then penalty u/s 272B Rs. 10,000 is livable.

If a person does not have PAN/GIR he will have to submit a declaration in form no. 60. If the assessee fails to apply for or quote PAN or quote false. PAN, then penalty of Rs. 10,000 as per section 272B will be paid by the assessee.

#### **Q4. Discuss briefly income escaping assessment or re-assessment.**

Ans. If AO has reason to believe that any taxable income has escaped for assessment for any assessment then he may assess or re-assess such income and also other taxable income which has escaped assessment. The word assessment include computation of taxable income tax payable on such income and serving of notice of demand.

In other words, if the assess has not fully disclosed his income which comes to notice of the AO subsequently he re-asses the income of the assess.

#### **Conditions for income escaping assessment —**

1. The AO must have reason to believe that income had escaped assessment.
2. Such escapement had occurred by reason of either omission or failure to disclose fully or truly all material facts by the assessee.

The re-assessment shall not be done after expiry of four years from the end of the relevant assessment year unless:

- a. Any taxable income has escaped assessment for such assessment year on account of the fact that the assessee has not filed return u/s 139.
- b. Any taxable income has escaped assessment as the assess has not filed any return u/s 142(1) (enquiry before assessment) or 148 (issue of notice for escaped assessment)

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- c. Any taxable has escaped assessment as the assess has failed to disclose fully and truly all material facts necessary for his assessment for that assessment year.

**Notice for reassessment u/s 148:-** Before making the assessment the AO should serve a notice to the assess requiring him to furnish a return of income. Before issuing a notice, the AO is required to record reasons for doing so.

**Time limit for issue of notice:-**

1. Notice can be issued within 4 years from the end of the relevant assessment year.
2. Notice can be issued within 6 years from the end of the relevant assessment year in case the escaped income is Rs. 1,00,000 or more.
3. Notice can be issued within 16 years from the end of the relevant assessment year in case the escaped income is in relation to any asset located outside India.

**Q5. Who is assessing Officer? Or define assessing officer.**

Ans. AO means the assessing officer or the income tax officer who is vested with the relevant jurisdiction by virtue of order issued u/s 120 (1) or 120 (2). It includes deputy commissioner who is directed u/s 120(4) of this act to act as AO. AO plays a very important role. He is primarily authority who initiates the proceeding and is directly connected with the public. He can start proceedings for non filing of return, imposition of penalties etc. orders passed by him can be challenged only on appeal. Only chief commissioner can revise the orders of AO.

**Q6. Write a short note on belated return u/s 139(4).**

Ans. If an assessee has not submitted his return of income.

- a. On or before the due date mentioned u/s 139(1); or
- b. Within the time allowed under a notice issued by the AO u/s 142(1) he can still file the return of income. such a return is called belated return and late return. Belated return can be filed 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. E.g. for a company assessee the last date for filing the return of income for previous year 2015-16 was 30.9.2016; but a late return may be filed at any time on or before 31-3-2018 or before the assessment is completed, whichever is earlier.

**Completion of the assessment:-** The word used in section 139(4) will refer only to the assessment u/s 144 i.e. best judgement assessment. Further, completion of assessment means the date on which the order of assessment was passed and not the date of service upon the assess. Thus a return of income submitted after the assessment completed but before the notice of demand is served would be invalid.

**Consequences of filing a belated return:-**

1. Assessee has to pay interest @1% p.m. 234A.
2. Assessee has to pay penalty of Rs. 5000 if the return is submitted after the end of the relevant assessment year.
3. A belated return cannot be revised.
4. Deduction u/s 80IA, 80IB, 80IC, 80IO and 80IE cannot be claimed.

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**Q7. What are the different penalties which can be imposed under the income tax act, 1961?**

**Or**

**Under what circumstances penalties are imposed under income tax act? Explain.**

Ans. Penalties are levied under the income tax act for the proper and fair implementation of act. Penalties create a fear in the mind of the assessee. Every tax payer tries to minimize his tax liability and if willful evasion is allowed to succeed, it will not only lead to revenue loss but will bring general disrespect for the law. Therefore, it becomes necessary to impose some penalties provisions under the act. Due to the fear of penalties, most of the assesses comply the provisions of the act with honesty. Income tax act provides following penalties provisions for the proper execution of the act.

1. **For failure to pay tax:-** If an assessee does not pay any amount of tax demanded under notice, then penalty can be imposed by the AO on the assessee. But the amount of penalties cannot be more than amount of tax demanded. However, the assessee must have given a reasonable opportunity of being heard.
2. **For failure to pay tax on self-assessment:-** If an assessee fails to pay his self assessment tax, then he will be liable to a penalty to be imposed ! 1% of the tax due on self assessment of each month of default. However, the assessee must have given a reasonable opportunity of being heard.
3. **For concealment of income:-** If an assessee has concealed the particulars of his income or has furnished inaccurate particulars of such income, then he will be liable to a penalty. In other words, if he produces wrong particulars or misleading information of income, then he shall be liable to pay penalty under the income tax act. Minimum penalty in this case can be imposed @100% of the amount of tax. Maximum penalty can be imposed 300% of the amount of tax evaded. Such penalty shall be in addition to tax if any payable.
4. **Failure to produce books of account on account of notice u/s 142(1) or 143(2):-** If an assessee fails to produce books of account demanded by assessing officer under the notice u/s 142(1) or 143(2) either completely or partly, then he shall be liable to pay penalty equal to a sum which shall not be less than Rs. 1000 of each failure but which shall not exceed Rs. 10000 for each failure. Such penalty shall be in addition to any tax payable by him in this regard.
5. **For failure to keep, maintain or retain books of account, documents etc. u/s 271A:-** If an assessee fails to keep and maintain books or documents as required u/s 44AA, then he will be liable to a penalty which may be equal to a sum which shall not be less than Rs. 25,000.
6. **Failure to get accounts audited u/s 142(2A):-** If an assessee fails to get his accounts audited from CA in respect of any previous year, then AO can impose penalty @1/2 of the total sales, turnover of gross receipts in business or of the gross receipts in profession or sum of Rs. 1,50,000, whichever is less.
7. **Failure to deduct tax at source:-** If an assessee fails to deduct the whole or part of the tax or fails to deposit such deducted amount of tax, then he shall be liable to pay a penalty which shall be a sum equal to the amount of the tax which he failed to deduct or pay as required.
8. **Failure to collect tax at source u/s 271C:-** If an assessee fails to collect the whole or part of the tax under the provision of income tax act, then such person shall be liable to pay penalty equal to the amount of tax. Such penalty shall be imposed by the joint commissioner of income tax.
9. **Failure to comply the provisions regarding accepting of loans etc. u/s 269SS u/s 271D:-** If a person takes or accepts loan or deposits exceeding Rs. 20,000 in cash or bearer cheque then he shall be liable to pay penalty equal to the amount of the loan or deposit so taken. Such penalty shall be imposed by the joint commissioner of income tax.
10. **Failure to comply the provisions regarding repayment of loan u/s 269T u/s 271E:-** If a person repays loan or deposits exceeding Rs. 20,000 in cash or bearer cheque, then he shall be liable to pay penalty equal to the amount of the loan or deposit so repaid. Such penalty shall be imposed by the joint commissioner of income tax.
11. **Penalty for non-filing of return u/s 271F:-** If a person who is required to file income tax return u/s 139 (1) on or before the end of the assessment year, then he shall be liable to pay the penalty of Rs. 5000.

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12. **For failure to furnish TDS/TCS statement/furnishing incorrect statement u/s 271H:-** In case of the above default penalty for Rs. 10,000 to Rs. 1,00,000 can be imposed. If assessee proves that TDS/TCS is furnished alongwith the fee and interest within a period of 1 year, then no penalty shall be imposed.
13. **For failure to furnish information or furnishing inaccurate information u/s 195 (non resident) u/s 271-I:-** If a person fails to furnish information u/s 195 or furnish inaccurate information, the AO may impose penalty a sum of Rs. 1,00,000.
14. **For failure to answer questions or sign statements u/s 272A(1):-** A penalty of Rs. 10,000 can be imposed for each default where the assessee is found guilty in the following cases:-
  - Refuses to answer any question put to him by an income tax authority.
  - refuses to sign any statement.
  - Fails to produce books of accounts or to attend personally to give evidence.
15. **For failure to comply with the provisions of section 133B u/s 272AA:-** Where in case of search the person fails to comply the provisions regarding the entry of income tax authorities in any building etc. penalty upto Rs. 1000 can be imposed. However, the person must be given an opportunity of being heard.
16. **Failure to comply with the provisions u/s 139A i.e. PAN u/s 271B:-** If a person has required to obtain PAN But he does not do so, then he is liable to pay penalty of Rs. 10,000 under the income tax act u/s 272B. In other hand, if a person quotes a false or incorrect PAN on any document and which he knows that it is false or incorrect and then the assessing officer may direct him to pay a penalty of Rs. 10,000. Such penalty can be levied after giving the opportunity to the concerned person.
17. **Failure to comply with the provisions of section 206CA(TCS) u/s 272BBB:-** If a person fails to obtain TCS number, then the penalty of Rs. 10,000 can be imposed by AO. However, the person must be given an opportunity of being heard.

### Q8. Explain the power of income tax officer relating to search and seizure.

Ans. The income tax authorities shall have the power of searching any building, place, vessel, vehicle or aircraft and seize books of accounts, other documents, money, bullion etc. They shall put identification marks on the seized articles. In other words, income tax authorities have the powers to take actions like search and seizure in cases where the people evaded tax and keep unaccounted assets. The details of such powers are explained as under:-

1	Entering and searching the premises
2	Authorities authorized to issue orders regarding search and seizure
3	Premises in the jurisdiction of another officer u/s 132 (1A)
4	Requisitioning the police help u/s 132 (2)
5	Ordering non removal of assets u/s 132 (3)
6	Administering oath u/s 132 (4)
7	Ownership of seized books u/s 132 (4A)
8	Levying of tax u/s 132 (5)

1. **Entering and searching the premises:-** The act has grant powers to income tax authorities for entering and searching the premises of the assessee if such assessee did not comply the notices issued u/s 142 regarding failure to produce books of accounts etc. ITO authorized by chief commissioner or commissioner has following powers for search and seizure of the assessee:-
  - a) Enter and search any building, place, vessel or aircraft where he had reason to suspect that such books of accounts, other documents, money, bullion, jewellery or other valuable articles are kept.
  - b) Break open the lock of any door, box, locker, safe, almirah if keys are not available.
  - c) Search any person who has got out of, or is about to get into, or is in the building, place, vessel, vehicle or aircraft, if the authorized officer has reasons to suspect that such person has secreted about his person any such books, account, other documents, money, bullion, jewellery or other valuable article.

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- d) Seize any such books of account, other document, money, bullion, jewellery or other valuable article found as a result of such search. If the bullion, jewellery etc. held as stock in trade of the business and which has been found in the course of search, then authorized officer shall not seized that stock in trade. However, he shall make a note or inventory of such stock in trade of the business.
- e) Place marks of identification on any books of accounts.
- f) Require any person who is in possession of or in control of any books or documents kept in electronic form to assist the authorities to inspect such electronic information.
2. **Authorities authorized to issue orders regarding search and seizure:-** U/s 132 (1), empowers the following income tax authorities to authorize other income tax authorities to conduct search and seizure operations. The following authorities are authorized to authorize other income tax authorities:-
- Chief commissioner
  - Commissioner
  - Joint commissioner
3. **Premises in the jurisdiction of another officer u/s 132 (1A):-** Where nay chief commissioner who has information or reason to suspect that any books of account, money, bullion or any other valuable articles are kept in any building, place, vessel or aircraft not mention in the authorization. Such chief commission may authorize the said officer to take action in respect to such building, place, vessel or aircraft.
4. **Requisitioning the police help u/s 132(2):-** The authorized officer has power to take the service of nay police officer or any other central govt. officer for the purpose of conducting the search. It is the duty of such officer to comply the request of authorized officer.
5. **Ordering non removal of assets u/s 132 (3):-** Where the authorized officer is not in position to seize any books of accounts, money, bullion or other valuable articles etc., then authorized officer will serve an order to the owner that he shall not remove these goods without the permission of such authorized officer.
6. **Administering oath u/s 132 (4):-** During search the authorized officer may examine on oath any person who has control over possession of books of accounts. Such statement may be used as evidence in the further proceedings.
7. **Ownership of seized books u/s 132 (4A):-** During search, it may be presumed
- That such books of account, money, bullion or valuable article belongs to such person.
  - That the contents of such books of account and other document are true.
8. **Levying of tax u/s 132(5):-** Where any money, bullion, jewellery or nay other valuable article is seized by the authorized officer, then such authorized officer after giving reasonable opportunity to the concerned person, shall pass order within 120 days of the seizure with the previous approval of deputy commissioner. The order includes
- Estimating the undisclosed income
  - Calculating the amount of tax on the estimated income
  - Determining the amount of interest and penalty payable
- The above provisions are related to search and seizure which are followed by such officer for conducting and seizure

**Q9. What are the provisions regarding deduction of tax at source under the head salaries?**

## Theory Notes

Ans. In certain specified cases of income tax at source should be deducted by the person responsible for making payment of such income. Income tax act provides that such tax must be deducted from the amount of both residents and non-residents according to the rates prescribed in the finance act of that year.

**TDS provisions in respect of payment of salaries u/s 192:-** Any person who is responsible for paying any income to other person which is taxable under the head salary, is liable to deduct income tax before making the payment of salary to such person. TDS is deducted at rate applicable in the respective financial year. In other words, deduction should be made where an amount is paid and it should be calculated at the rate prescribed for the year in which the payment to the employee is made. The following are the important provisions in case of salaried employees:-

1. **Employment under more than one employer during relevant previous year:-** The assess must furnish details of his salary received from previous employer to the present employer for deduction of tax at source.
2. **Relief u/s 89(1):-** In case any arrears are paid to an employee working in nay govt. organisations or company, local authority, university and he is entitled to relief u/s 89(1), he may apply to his employer and employer can allow relief u/s 80(1) before deduction of tax at source.
3. **Income from any other head:-** A salaried employee can furnish details of his income falling under other heads to the employer and employer will deduct tax on such other income also.
4. **Statement of perquisites or profit in lieu of salary to employee:-** A statement giving full and correct particulars of perquisites and profits in lieu of salary is provided by the employer to the employee.
5. **Allow ability of deductions u/s 80:-** Before calculating estimated income of the employee, employer deducts allowable deduction falling under section 80. In other words, out of gross estimated income deduction u/s 80 will be deducted and balance amount will be considered for deducting TDS.
6. **Rates of tax to be deducted at source:-** Applicable rate of tax will be applied on the estimated income of the employee.
7. **Employer to obtain evidence from employee in respect of prescribed claims in prescribed manner:-** It is responsibility of employer to obtain evidence or proof of any claim (including set off of loss) for the purpose of estimating the income and tax liability of the employee.
8. **Payment from superannuation fund:-** Where contribution made by employer including interest to an approved superannuation fund is paid to employee, the trustee of the fund shall deduct tax to the extent prescribed.
9. **More than one employer in a financial year:-** The employee may furnish to his present employer
  - Salary received and TDS deducted by the previous employer
  - Other particulars

**Q10. Explain the provision of income tax relating to TDS on interest on securities and payment to contractors.**

Ans. TDS provision on interest on securities u/s 193

1	Nature of payment	<ul style="list-style-type: none"> <li>• Interest on debentures issued by a local authority or a statutory corporation</li> <li>• Interest on debentures of a company or</li> <li>• Interest on any security of the central or state govt.</li> <li>• Any other interest on securities</li> </ul>
2	Person responsible to deduct tax	Central or state govt., local authority company or corporation established by central or state govt.
3	Category of payee	Any person being resident
4	Rate of TDS	10% in case of no PAN the rate of TDS is 20%
5	Time of deduction	At the time of credit or payment, whichever is earlier.
6	Exemption from TDS	Aggregate amount of interest from nay one security does not exceed Rs. 5000
7	No TDS	Interest on national development bond, 7 year national saving certificates, national defence loan etc.

**TDS provision on payment to contractors**

## Theory Notes

1	Nature of payment	Payment to contractors including sub-contractors for carrying out any work including supply of labour for carrying out any work
2	Person responsible to deduct tax	Payment made by specified person other than individual or HUF, who are not subject to tax audit during the preceding financial year.
3	Category of payee	Any person being resident
4	Rate of TDS	If payee is individual and HUF then 1% For others 2%
5	Time of deduction	At the time of credit or payment, whichever is earlier.
6	No TDS	If payment made for single contract does not exceed Rs. 30,000 and aggregate of such sums does not exceed Rs. 75,000.

**Q11. Explain the provisions of income tax relating to TDS on interest other than interest on securities and income from dividends.**

**Ans. TDS provision on interest or interest on securities u/s 194A**

1	Nature of payment	Interest other than interest on securities
2	Person responsible to deduct tax	Payment made by specified person other than individual or HUF, who deduct tax are not subject to tax audit during the preceding financial year
3	Category of payee	Any person being resident
4	Rate of TDS	10% in case of no PAN the rate of TDS is 20%
5	Time of deduction	At the time of credit or payment, whichever is earlier.
6	Exemption from TDS	In case interest is paid by banking co, post office, cooperative society, interest is more than Rs. 10,000; in any other case Rs. 5000.
7	No TDS	Interest paid to partners by the firm, interest paid to members by co-operative society, interest on income tax refund, interest on saving bank deposit.

**TDS provision on dividend u/s 194**

1	Person responsible to deduct tax	Principle officer of an Indian company or company which has made deemed dividend other than dividend u/s 115-O (the companies which have paid dividend distribution tax)
2	Category of payee	Any person being resident
3	Rate of TDS	10%
4	Time of deduction	Before making any payment in cash or cheque or warrant to a shareholder.
5	No TDS	<ul style="list-style-type: none"> <li>• Dividend referred u/s 115-O</li> <li>• Dividend does not exceed ₹ 2,500</li> <li>• Dividend paid to LIC, GIC or its subsidiaries</li> </ul>

**Q12. Explain the provision of income tax relating to TDS winning from lotteries, puzzles, games and horse races.**

**Ans. TDS provision on winning from lotteries, puzzles, games etc. u/s 194B**

1	Nature of payment	Winning from lottery, cross word puzzles, card games or game of any sort
2	Person responsible to deduct tax	Any person paying the sum by way of winnings from lottery, crossword puzzle, card games or game of any sort
3	Category of payee	All assessee
4	Rate of TDS	30%
5	Time of deduction	At the time of payment
6	No TDS	<ul style="list-style-type: none"> <li>• No TDS if the payment does not exceed ₹ 10,000</li> <li>• Where the amount exceeds ₹ 10,000 the entire amount paid is subject to TDS.</li> </ul>

**TDS provisions on winning horse races 194B**

1	Nature of payment	For those racing in any race course or for arrangement of wagering or betting in any race course
2	Person responsible to deduct tax	Any person being licensed by the govt.
3	Category of payee	All assessee
4	Rate of TDS	30%
5	Time of deduction	At the time of payment
6	No TDS	<ul style="list-style-type: none"> <li>• No TDS if the payment does not exceed ₹ 5,000</li> <li>• Where the amount exceeds ₹ 5,000 the entire amount paid is subject to TDS.</li> </ul>

## Theory Notes

### Q13. What is income tax appeal?

**Ans.** Income tax liability is determined at the level of assessing officer. When a taxpayer is adversely affected by orders as passed by the assessing officer, he can file an appeal before the commissioner of income tax having jurisdiction over the tax payer. Due to complex nature of income tax act, some time there is difference of opinion among the assessee and the AO. When an assessee is not satisfied by an assessment order and such an aggrieved assessee can present his case before specified authorities prescribed under income tax act. Such prescribed authorities constitute 'appellate machinery' or 'appellate authorities'. In other words, when the assessee is not satisfied from the order passed by AO, then such assessee can file appeal to the appellate authorities against such orders.

**Right to appeal:-** The right to " appeal is not the natural right of the assessee. It is a statutory right of the assessee and cannot be defined to him by any order of CBDT.

**Parties to an appeal:-** There are two parties to any appeal

1. **Appellant:-** The person filing an appeal is called appellant or applicant. Under income tax, the first appeal can only be filed by assessee and hence only assessee can be appellant in such a case. However, in subsequent appeals, (i.e. appeal to ITAT, HC or SC) appellant can be assessee or CIT.
2. **Defendant/Respondent:-** The person against whom the appeal is filed is called 'defendant or respondent'.

**Various appellate authorities under the income tax act**

1. Commissioner (appeals)
2. Income tax appellate tribunal (ITAT)
3. High court
4. Supreme court

#### 1. Appeal to commissioner (appeals)

1	Appealable orders	<ul style="list-style-type: none"> <li>• Order against tax payer denies liability to be assessed under income tax act</li> <li>• Intimation issued under section 143(1) making adjustments to the returned income</li> <li>• Scrutiny assessment order u/s 143(3) or an ex-parte assessment order u/s 144</li> <li>• Re-assessment order passed after reopening the assessment u/s 147/150</li> </ul>
2	Time limit for presenting appeal	<p>Appeals should be presented within 30 days of the following date:</p> <ul style="list-style-type: none"> <li>• Where the appeal relates to any tax deducted under section 195(1), the date of payment of the tax</li> <li>• Where the appeal relates to any assessment or penalty, the date of service of notice of demand relating to the assessment or penalty</li> <li>• In any other case, the date on which intimation of the order sought to be appealed against is served.</li> </ul> <p>The commissioner (appeals) may admit belated application on sufficient cause being shown.</p>
3	Form of appeal	CBDT had issued a new form no. 35 for filing an appeal before CIT(A). further, e-filing of form has been made mandatory for persons for whom e-filing of return of income is mandatory.
4	Signing of form	The form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the person authorized to sign the return of income under section 140 as applicable to the assessee.
5	Documents to be submitted	<ul style="list-style-type: none"> <li>• One copy of order appealed against</li> <li>• Notice of demand in original</li> <li>• Copy of challans of fees. The details of the challan (i.e. BSR code, date of payment of fee, serial number and amount of fee) are required to be furnished in case of e-filing of form of appeal.</li> </ul>
6	Court fee stamp	Court fee stamp of 50 paise is to be affixed on the first copy of form no 35.
7	Fee	<p>In case of appeals to commissioner (appeals) the following fee is payable:</p> <p>Where assessed income is Rs. 1,00,000 or less Rs. 250.</p> <p>Where assessed income is more than Rs. 1,00,000 but not more than Rs. 2,00,000 Rs. 500.</p> <p>Where assessed income is more than Rs. 2,00,000 — Rs. 1,000.</p> <p>Where subject matter of appeal is not covered under any of the above Rs. 250</p>

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8	Appeal procedure	On receipt of form no. 35, commissioner of income tax (appeals) fixes date and place for hearing the appeal by issuing notice to the tax payer and the assessing officer, against whose order appeal is preferred. The tax payer has a right to be heard either personally or through an authorized representative.
9	Disposal of appeal	Within a period of one year from end of financial year in which appeal is filed (where it is possible).

2. **Income tax appellant tribunal (ITAT):-** The commissioner of income tax (appeals) is the first appellant authority and the income tax appellate tribunal (ITAT) is the second appellate authority. Appeal to the ITAT can be filed by any of the aggrieved party either by the taxpayer or by the assessing officer.

1	When appeal can be filed before ITAT	Tax payer can file appeal before the income tax appellate tribunal against the following orders: <ol style="list-style-type: none"> <li>1. Order by commissioner (appeals) u/s 250/154/271/271A/272A</li> <li>2. Order by commissioner u/s 12AA on registration application a charitable or religious trust</li> <li>3. Order by commissioner u/s 263 revising assessing officer's order of considered prejudicial to the interest of revenue;</li> <li>4. Order by commissioner u/s 154 to rectify an order u/s 263</li> <li>5. Penalty order passed by commissioner u/s 271 or section 272A</li> <li>6. Penalty order passed by chief commissioner u/s 272A;</li> <li>7. Order passed by assessing officer u/s 143(3)/147 in pursuance direction of dispute.</li> </ol>
2	Form of appeal	Form no. 36 — To be filled in triplicate and is to be accompanied by two copies of order appealed against
3	Appeal fees	Total income as computed by assessing officer. Less than Rs. 1 lakh — Rs.500 More than Rs. 1 lakh but less than Rs. 2 lakh — Rs. 1,500 More than Rs. 2 lakh — 1% of assessed income, subject to maximum of Rs. 10,000. Where the subject matter of appeal relates to any other matter, fee of Rs. 500/- is to be paid. An application for stay of demand is to be accompanied by fee of Rs. 500
4	Time for filing appeal	Within 60 days of date on which order appealed against is communicated to the taxpayer or the commissioner
5	Memorandum of cross objections	The tax payer or the assessing officer on receipt of notice that an appeal has been filed before the appellate tribunal against order of commissioner (appeals) by the other party can, within 30 days of receipts of notice, file a memorandum of cross objections in form no. 36A. Such memorandum of cross objections can be filed even if no appeal is filed by the tax payer or the assessing officer himself.
6	Appeal procedure	The appellant or the respondent, as the case may be, may submit a paper book induplicate containing documents or statements or other paper referred to in the assessment or appellate order, which it may wish to rely upon. The paper book duly indexed and page numbered is to be filed at least a day before the hearing of the appeal along with proof of service of copy of the same on the other side at least a week before. The appellate tribunal fixes the date for hearing the appeal and notifies the parties specifying date and place of hearing of the appeal. A copy memorandum of appeal is sent to the respondent either before or along with such notice. The appeal is heard on the date fixed and on other date to which may be adjourned. If the appellant does not appear in person or through an authorized representative when appeal is called on for hearing, the ITAT may dispose of the appeal on merits after gearing the respondent.
7	Filing of additional evidence	The parties to the appeal are not entitled to produce additional evidence of any kind, either oral or documentary before the tribunal.
8	Appeal decision	Normally appeals are heard by a bench comprising one judicial member and one accountant member. Appeals where total income computed by the assessing officer does not exceed Rs. 5 lakh may be disposed of by single member bench. The president of ITAT is empowered to constitute special bench consisting of three or more than three members for disposal of any particular case, one of whom would necessarily be a judicial member and one an accountant member.
9	Disposal of appeal	Within a period of 4 year from end of financial year in which appeal is filed (where it is possible)

3. **Appeal before high court:-** Appeal against appellate tribunal's order lies with the high court, where the high court is satisfied that the case involves a substantial question of law. Appeal to the high court

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against appellate tribunal's order can be filed by the tax payer or the chief commissioner/commissioner within 120 days of receipt of the order and in the form of memorandum of appeal, precisely stating the substantial question of law involved. If the high court is satisfied that a substantial question is involved, it would formulate that question. High court hears the appeal only on the question of law so formulate, however the respondents can argue at the time of hearing that case does not involve such question of law. Appeal filed before high court is heard by bench of not less than two judges and decision is by majority. There is no time limit for the dispose of appeal.

4. **Appeal before supreme court:-** Appeal against high court's order in respect of appellate tribunal order lies with the supreme court in those cases, which are certified to be fit one for appeal to the supreme court. Special leave can also be granted by the supreme court under article 136 of the constitution of India against the order of the high court. The appeal can be filed within days of receipt of such order. There is no time limit for the dispose of appeal.

### A brief look on appeal

Authorities	Commissioner (appeals)	Appellate tribunal	High court	Supreme court
Sequence of appeal	1 <sup>st</sup> appeal	2 <sup>nd</sup> appeal	3 <sup>rd</sup> appeal	Final appeal
Appellant	Only assessee	Assessee or CIT	Assessee or CIT	Assessee or CIT
Appealable order	Order of AO	Order of commissioner (A)	Order of ITAI	Order of HC
Time limit to file appeal	Within 30 days	Within 60 days	Within 120 days	Within 60 days
Fees	₹ 250-1000	₹ 500-1000	As per HC rules	As per supreme court
Form	35	36	No prescribe form	No prescribe form
Time limit to dispose off the case	Within 1 year	Within 4 years	No time limit	No time limit

### Q14. What do you mean by assessment? Discuss the various types of assessment under income tax act.

Ans. Every taxpayer has to furnish the details of his income to the income tax department. These details are to be furnished by filing up his return of income. Once the return is filled up by the tax payer, the next step is the processing of the return of income by the income tax department. The income examines the return of income for its correctness. The process of examining the return of income by the income tax department is called as "assessment". Assessment also includes re-assessment and best judgement assessment u/s 144. Under the income tax act, there are four major types of assessments given below:-

1	Summary assessment u/s 143(1)
2	Regular assessment / scrutiny assessment u/s 143(3)
3	Best judgement assessment u/s 144
4	Income escaping assessment u/s 147

1. **Summary assessment u/s 143 (1):-** This is a preliminary assessment and is referred to as summary assessment without calling the assessee (i.e. taxpayer). Scope of assessment:- Assessment u/s 143(1) is like preliminary checking of the return of income. At this stage no detailed scrutiny of the return of income is carried out. At this stage, the total income or loss is computed after making the following adjustments (if any), namely:-

- An incorrect claim, if such claim is apparent from any information in the return

For the above purpose "an incorrect claim apparent from any information in the return" means a claim on the basis of an entry in the return:-

- Of an item which is inconsistent with another entry of the same or some other item in such return.
- In respect of which the information is required to be furnished under the act to substantiate such entry and has not been so furnished; or

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- In respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount of %age or ratio or fractions.

### Procedure of assessment of assessment u/s 143 (1)

1	After completing arithmetical error or incorrect claim (if any) as discussed above, the tax and interest, if any, shall be computed on the basis of the adjustment income
2	Any sum payable by or refund due to the taxpayer shall be intimated to him
3	An intimation shall be prepared or generated and sent to the taxpayer specifying the sum determined to be payable by or the amount of refund due to the taxpayer
4	An intimation shall be also be sent to the taxpayer in a case where the loss declared in the return of income by the taxpayer is adjusted but no tax or interest is payable by or no refund is due to him.
5	The acknowledgement of the return of income shall be deemed to be the intimation in a where no sum is payable by or refundable to the assessee or who is no adjustment is made the returned income.
6	The processing of a return u/s 143(1) shall not be necessary, where a notice has been issued to the assessee u/s 143 (2), i.e. scrutiny assessment has been issued to the taxpayer.

**Time limit:-** Assessment u/s 143(1) can be made within a period of one year from the end of the financial year in which the return of income is filed.

2. **Scrutiny assessment or regular assessment u/s 143(2):-** This is detailed assessment and is referred to as scrutiny assessment. At this stage a detailed scrutiny of the return of income will be carried out. At this stage a scrutiny is carried out to confirm the correctness and genuineness of various claims, deductions, etc. made by the taxpayer in the return of income. It is also known as regular assessment.

**Scope:-** The objective of scrutiny assessment is to confirm that the taxpayer has not understand the income or has not computed excessive loss or has not understand the tax in any manner. To confirm the above, the AO carries out a detailed scrutiny of the return of income and will satisfy himself regarding various claims, deductions, etc. made by the taxpayer in the return of income.

### Procedure of assessment u/s 143 (3)-

1	If the AO considers it necessary or expedient to ensure that the taxpayer has not understand the income or has not computed excessive loss, then he will serve on the taxpayer a notice requiring him to attend his office or to produce or cause to be produced any evidence on which the taxpayer may rely in support of the return.
2	To carry out assessment u/s 143(3), the AO shall be serve such notice in accordance with provisions of section 143(2).
3	Notice u/s 143(2) should be served within a period of 6 months from the end of the financial year in which the return is filed
4	The taxpayer or his representative will appear before the AO and will place his arguments. supporting evidences etc., on various matters issue as required by the AO
5	After hearing / verifying such evidence and taking into account such particulars as the taxpayer may produce and such other evidence as the AO may require on specified points and after taking into account all relevant materials which he has gathered, the AO shall, by an order in writing, make an assessment of the total income or loss of the taxpayer and determine the sum payable by him or refund of any amount due to him.

**Time limit:-** It shall be made within a period of 2 years from the end of the relevant assessment year.