CHAPTER FOUR
THE ORGANISATIONAL MECHANISMS AS TOOL TO PREVENT INTERNATIONAL TAX EVASION

4.1 Introductory

There are five major stakeholders relating to law and its enforcement. They are legislature, judiciary, lawyers, academics and administration. Each one has its own contribution towards development of law. Legislature enacts the statute which provides the basic framework for regulating a specific area. Judiciary and lawyers interpret such statutes to limit or enlarge the scope of such area. Academics try to evolve and highlight new theories which can be adopted by legislature while making amendments or enacting new legislation and by judiciary while interpreting such legislations. Out of these five stakeholders, administration is a loosely defined area as it embraces law, public administration, sociology, psychology and economics nevertheless its role is indispensable in executing any statute.

Administration relating to taxation laws is closely linked to fiscal policy because its ultimate result is to increase or lower government revenue and the overall fiscal deficit. Tax administrations in a developing country in effect make tax policy by deciding how to apply tax legislation. It has its own policy implications like whether to place higher or lower tax burdens on particular sectors of the economy and whether to favor or to penalize particular income classes and different factors of production. They link legal statutes and the real implemented tax systems and thus affect fiscal deficits and tax burdens of different sectors and income classes.
In addition, tax administration may also play a powerful role in influencing the efficiency of the economy by making intended or unintended distortions of consumer choices and producer decisions. In many countries, especially in developing countries, small amounts of collected public revenue can be explained by either incapability of the tax administration in realization of its duty, or with some degree of corruption. Tax administration with a skilled and responsible staff is almost the most important precondition for realization of “tax potential” of the state. It is generally known that tax laws and tax policy are as good as the tax administration.

However, most of the existing research on tax evasion is confined to the unilateral action of taxpayers and they neglect the interaction between tax system and tax administration. The present chapter deals with the one of the five stakeholders, namely, tax administration and examines their role in curbing or contributing to tax evasion. Further, an outline of various International Tax Organizations operating at International level has also been done.

### 4.2 Structural Hierarchy of the Income Tax Department

The structural hierarchy of the Income Tax Department consists of the Central Board of Direct Taxes at the top and nine other authorities functioning under it. Section 116 of the *Income Tax Act, 1961* includes following other categories as Income Tax Authorities:

(i) Directors General of Income Tax or Chief Commissioners of Income Tax;

(ii) Directors of Income Tax or Commissioners of Income Tax or

---


Commissioners of Income Tax (Appeals);
(iii) Additional Directors of Income Tax or Additional Commissioners of Income Tax or Additional Commissioner of Income Tax (Appeals);
(iv) Joint Directors of Income Tax or Joint Commissioner of Income Tax;
(v) Deputy Directors of Income Tax or Deputy Commissioners of Income Tax or Deputy Commissioners of Income Tax (Appeals);
(vi) Assistant Directors of Income Tax or Assistant Commissioners of Income Tax;
(vii) Income Tax Officers;
(viii) Tax Recovery Officers; and
(ix) Inspectors of Income Tax.

This Department has more than sixty thousand personnel located in approximately five hundred cities and towns across India. The field offices are divided into regions and each region is headed by a Chief Commissioner of Income Tax. Every region is assigned annual performance targets such as revenue collections, and is provided with necessary expenditure budget to meet with its operating expenses.270

4.2.1 The Central Board of Direct Taxes

The Central Board of Direct Taxes is one of the ten authorities mentioned under Chapter XIII of the Income Tax Act, 1961.271 This Act does not amplify the constitution of this Central Board as in the case of settlement commission. This is because a separate statute, namely, Central Board of Revenue Act, 1963 governs it. In addition to a chairman who is an ex-officio special secretary to the Government of India, there are six members who are ex-officio additional secretaries to Government of India. The chairman is


responsible for overall administrative planning, transfers, postings, public grievances, foreign training and control over director general for International Taxation. The other members are responsible for following works:

(i) **Member (Income Tax):** All matters relating to Income Tax Act and supervision / control over director general for exemption.

(ii) **Member (Legislation and Computerization):** All works connected with recommendations and reports of various commissions; Matters relating to tax planning and legislation; Monitoring tax avoidance and suggesting legislative actions; Computerization of Income Tax Department; and supervision / control over director general for systems and business process re-engineering.

(iii) **Member (Revenue):** Assigning of budget targets and collection of revenue

(iv) **Member (Personnel and Vigilance):** Supervision and control over director general of training and human resource development

(v) **Member (Investigation):** Matters relating to search, seizure and survey; Supervision / control over director general for investigation and intelligence.

(vi) **Member (Audit and Judicial):** Matters relating to appointment of standing counsels and audit; supervision / control over director general for legal and research.

The Central Board of Direct Taxes regulates the administrative procedures through the *Income Tax Rules, 1962* and the Manual of Office Procedure. The rules which have been notified by the Central Board lay down the limits, conditions, definitions, explanations, and forms of applications and procedures for the uniform application of the *Income Tax Act*.\(^{272}\) The manual of office procedure is divided into three volumes. The first volume deals with administrative aspects; composition and organization of the Income Tax

---

Department; work allocation and personnel matters as department examinations, confidential reports; vigilance, training and general grievance redressal mechanism. The second volume deals with technical aspects, assessment procedures, widening of tax base, central information branches, refunds, recovery, write off, interest, penalty, prosecution, appeals and revisions. The third volume deals with other subjects like authority for advance ruling, settlement commission, search and seizure, internal audit, revenue audit, inspection and reports.

The Central Board of Direct Taxes is also vested with wide powers to issue orders, directions and instructions to subordinate authorities with a view to ensure uniform and proper administration. These administrative documents are very important for tax officers and taxpayers. The board has issued such guidelines on multifaceted issues under the Income Tax Act, 1961 like matters governing filing of appeals, selection of cases for scrutiny, staying of tax demand, manner in which administrative decisions are to be taken etc. etc.

4.2.1.1 Scope of Administrative Orders Issued by the Central Board of Direct Taxes

An important question that arises while discussing the scope of the administrative orders issued by the Central Board of Direct Taxes is that whether these orders can be more favorable to the taxpayers than the statute itself or even if they are against the judicial interpretation given by the courts. The Navnit Lal C. Javeri’s Case is a land mark judgment on this issue which lays down categorically that any circular issued by the Board under section 119 of the Income Tax Act, 1961 even if it deviates from the statute

and provides unintended relief to the taxpayer, must be given effect to and the interpretation of the provision by the court or tribunal in a manner different from the circular cannot by itself justify the levy being imposed on the taxpayer.\textsuperscript{275} This is because of the fact that judicial interpretation of a statutory provision may be contrary to the intention expressed by the executive through its circular and when once the executive as a policy making body has chosen to take a view beneficial to the assessee, the contrary view taken by courts or tribunals cannot be basis to raise or sustain any tax liability by way of demand of tax, interest or penalty.\textsuperscript{276} This position has been further reiterated by many high courts and apex court.\textsuperscript{277}

In light of these decisions, the Delhi High Court judgment in the case of Shiva Kant Jha assumes prime importance as this case relates to non-resident taxation and court took a contrary stand. The main issue involved before the Delhi High Court in this case was regarding the validity of the CBDT Circular No. 789 dated 13 April 2000. This circular was challenged on the ground that it provided more beneficial position to the assessee by holding that the Foreign Institutional Investors and other investment funds operating in Mauritius are liable to tax under the Mauritius Tax Law, therefore, to be considered as the residents of Mauritius. This residential status granted various reliefs to these entities under the Double Tax Convention between India and Mauritius. Surprisingly, the Delhi High Court struck this circular as \textit{ultra vires} and unauthorized by law without any regard to the settled position of law in this

\textsuperscript{275} Navnit Lal C. Javeri v. K. K. Sen, AAC, (1965) 56 ITR 198 (SC).


regard. This was challenged before the Apex court where Delhi High Court’s judgment was quashed and it was held that the Circular No. 789 was valid and efficacious.\textsuperscript{278} Thus, the Supreme Court upheld and reiterated the settled position of law.

Another important question relating to the scope of the administrative orders issued by the Central Board of Direct Taxes is that whether such instructions or orders can be issued to the appellate authorities under the \textit{Income Tax Act}, 1961. To answer this question, one must analyze the scheme and powers given to the Board on one side and the nature of the functions performed by the appellate authorities on other side and that too in light of the law laid down by various courts. The Appellate Commissioner is an Income Tax Authority mentioned under section 116 of the Act and the Central Board of Direct Taxes constituted under the \textit{Central Board of Revenue Act}, 1962 is the apex body for coordinating the administration of the income tax machinery. The other income tax authorities as mentioned are Chief Commissioners, Commissioners, Joint Commissioners, Additional Commissioners, Deputy Commissioners, Assistant Commissioners, Income Tax Officers, Tax Recovery Officers and Inspectors. All these authorities including the appellate commissioner perform different kinds of functions which are purely executive / ministerial and sometimes they are quasi-judicial in nature. For example, while making an assessment, the tax authorities perform a quasi-judicial function. Similarly, Commissioner while exercising revisionary jurisdiction under the Act performs quasi-judicial functions. However, his other work is purely administrative in nature. It is a settled position of law that the appellate commissioners always perform quasi-judicial functions.\textsuperscript{279} There is a \textit{lis pending before them which has to be decided between an assessee and the Income Tax Department.}

\textsuperscript{278} \textit{Union of India & Anr. v. Azadi Bachao Andolan & Anr.}, (2003) 184 CTR 450 (SC).

The Board, no doubt, is the apex body for coordinating and ensuring uniformity in administrative decision has the power to regulate administrative functions however the power seems to be curtailed in relation to regulation of quasi judicial functions. Section 119 of the Income Tax Act, 1961 clearly spells out that the Board cannot interfere to make a particular assessment or to dispose of a particular case in a particular manner. Thus, the board cannot interfere with the discretion of the appellate authorities in exercise of appellate functions.\(^{280}\)

4.2.1.2 Power to Condone Delays

Section 119 of the Income Tax Act, 1961 gives power to the Central Board of Direct Taxes for issuing instructions to subordinate authorities. Clause (b) of sub-section 2 of this section relates to avoidance of genuine hardship in any case or class of cases by a general or special order.\(^{281}\) The nature of this power has been considered and explained by various courts in different judgments. The Karnataka high court has held that the Central Board of Direct Taxes has sufficient power to consider the desirability or expediency of awarding relief under the Act even after the expiry of the period of limitation and dispose of the matter on the merits in accordance with law, provided it is intended for avoiding genuine hardship in a given case.\(^{282}\) The same High Court but in a different case explained that the board while considering an application under section 119(2)(b) for condoning delay discharges a quasi-


\(^{281}\) Clause (b) of sub section 2 of section 119 of the Income Tax Act, 1961 states that: The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order authorize any income tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

\(^{282}\) Mysore Sales International Limited v. Member, CBDT, (1999) 151 CTR 424 (Kar).
judicial function and is therefore required to afford an opportunity of hearing to the assessee either orally or through submission of written arguments.\textsuperscript{283} The Madras High Court has categorically held that the power under section 119(2)(b) is to be exercised in consistence with the principles of natural justice.\textsuperscript{284} In another decision, the Kerala High Court made observations that section 119 does not provide for an oral hearing on such applications but there has been no disagreement on the issue that power available to the board is to be exercised in a quasi judicial manner.\textsuperscript{285} In a case where the board rejected application of a taxpayer without recording any reasons for the same, the Gujarat High Court held that matter required reconsideration as the board was performing a quasi-judicial function.\textsuperscript{286}

It may be observed that courts have been quite considerate in deciding the applications for condoning delays unless the delay is attributable to deliberate conducts. The cardinal rule to be noted where the application may be rejected is that ‘no one gains by delay’. Delays are condoned only in circumstances beyond the control of the taxpayer. Regrettfully, such spirit of courts is not reflected in the quasi judicial decisions taken by the Central Board of Direct Taxes.\textsuperscript{287} The most recent example of arbitrary decision taken by the Board is that of Bombay Mercantile Co-operative Bank Limited. In this case, the bank had filed an application for condoning delay in filing of return as there was a delay in appointment of statutory auditor by the concerned department of the state government. The Board rejected the application on the ground that the issues raised by the applicant were of general nature. The bank filed a writ petition against this order before the Bombay High Court which found that the delay in appointment of statutory auditor was a

\begin{footnotesize}
\textsuperscript{283} H.S. Anantharamaiah v. CBDT, (1993) 109 CTR 353 (Kar).
\textsuperscript{284} Tiam House Service Limited v. CBDT, (2000) 163 CTR 22 (Mad).
\textsuperscript{285} A.P. Sivaraman v. ITO, (1999) 151 CTR 22 (Ker).
\textsuperscript{286} Kushben M. Parikh v. CBDT, (1999) TaxLR 250 (Guj).
\end{footnotesize}
sufficient cause which should justify delay in the filing of return. The High Court
did not even considered the other points raised by the petitioner by holding
that “other grounds raised in the petition to assail the impugned order need
not be gone into” and allowed the writ petition.288

4.2.2 Directorate Generals and Chief Commissioners for Income Tax
Administration

The Central Board of Direct Taxes functions through eight directorates as
attached offices. The specialized tasks entrusted to them are administration,
systems, vigilance, training, legal research, business process re-engineering,
intelligence and human resource development. The portfolios handled by
some of these directorates are as under:

(i) The Director General of Income Tax (Administration): supervises the
functioning of directors for audit, recovery, TDS, inspection and
examination.

(ii) The Director General of Income Tax (Systems): supervises and controls
the directors for systems, infrastructure, and organization and
management services.

(iii) The Director General of Income Tax (Vigilance): head of the four
regional directors, namely, north, south east and west.

(iv) The Director General of Income Tax (Training): head of Nagpur Tax
Academy, Regional Training Institutes and Ministerial Staff Training
Units.

(v) The Director General of Income Tax (HRD): heads the directors for
HRD.

In addition to these directorates, there are three more directorates, namely,
investigation, exemption and international taxation who are working at field
level along with the eighteen cadre controlling chief commissioners. From the
international taxation perspective, the directorate generals for international

and other chief commissioners working in the field are an important functionary.

4.2.2.1 The Directorate General for International Taxation

The Director General for International Taxation performs various functions like supervision and control the work of directors for international taxation; vigilance and disciplinary matters relating to them; computerization; and statutory functions. There are five directors for international taxation located at Delhi, Mumbai, Kolkata, Chennai and Bangalore. They look after the statutory functions in respect of taxation of foreign companies and non residents; and withholding tax on remittances abroad. Apart from these directors, there are directors for transfer pricing functioning under the directorate general for international taxation. These directors for transfer pricing determine the price by any of the methods mentioned under section 92 of the Income Tax Act, 1961 if a reference is made by an assessing officer.

4.2.2.2 The Chief Commissioners of Income Tax

There are one hundred sixteen posts of chief commissioners who are the administrative heads of their regions. All these regions fall under different zones which are headed by one of the members of the Central Board. Out of these one hundred sixteen chief commissioners, only nineteen are designated as cadre controlling authorities. The exclusive function which is performed by the cadre controlling chief commissioners is transfer and postings; fixation of strength of various cadres; allocation of staff to different commissioners; protocol functions; and employees’ association matters. The functions which all the chief commissioners including cadre controlling officers perform are supervision and control over commissioners; administrative approvals for write offs; administrative sanctions for launching prosecutions; statutory functions; and staff grievances.
4.2.3 The Directors and Commissioners of Income Tax

There are a number of directors and commissioners who work under the control and supervision of director generals and chief commissioners respectively. The Commissioners of Income Tax perform detailed administrative and statutory functions enumerated under the Income Tax Act, 1961. Such commissioners have different designations like CIT (Appeals), CIT (Operations), CIT (Judicial), CIT (Audit) etc. depending upon the portfolio held by them. They are assisted by Additional Commissioners, Joint Commissioners, Deputy Commissioners and Assistant Commissioners in tax administration. The Additional / Joint Commissioners (Range) are the head of one particular range falling under the jurisdiction of a commissioner income tax.

4.2.4 Assessing Officers and Tax Recovery Officers

Every range under the Commissioner of Income Tax consists of two main units, namely, assessment and collection. The assessment unit consists of five assessing officers (one deputy/assistant commissioner and four income tax officers). The collection unit is headed by tax recovery officer who is responsible for collection and recovery of tax. The miscellaneous unit of record keeping is headed by an administrative officer or office superintendent.

The assessment unit which is assisted by the tax inspectors and other staff performs various important functions like allotment of permanent account numbers; processing of returns; timely collection of demands and payment of refunds; taking necessary steps for widening the tax base; giving appeal effects; and other statutory functions.
The jurisdiction of a tax recovery officer commences when an assessee is in default or is deemed to be in default in making payment of tax. The tax Recovery Officer may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee.\(^{289}\) Such officer has to follow the procedure prescribed under the 1961 Act while making recovery under following modes:\(^{290}\)

(i) Attachment and Sale of Assessee’s Movable Property;
(ii) Attachment and Sale of Assessee’s Immovable Property;
(iii) Arrest of Assessee and his Detention in Prison;
(iv) Appointing a receiver for the management of his movable and immovable properties.

4.3 Administrative Powers to Counter Tax Evasion

The above mentioned income tax authorities have wide powers under the Income Tax Act, 1961 for checking and curbing the menace of tax evasion and avoidance. Such powers may be exercised in respect of both resident and non-resident tax payers. They can also be exercised in respect of international transactions entered into by any taxpayer. Hence, they can act as a powerful tool against international tax evasion. Such powers have been discussed under following subheads.

4.3.1 Power Regarding Discovery and Production of Evidence

The powers available to a civil court under Section 30 of the Civil Procedure Code, 1908 which are exercised by it while trying a suit are also conferred on Income Tax Authorities.\(^{291}\) Such powers include discovery, inspection, issuing of commissions, compelling production of books, enforcing attendance of

\(^{290}\) ibid, Schedule II; Also see the Income Tax (Certificate Proceedings) Rules, 1962.
any person and examination on oath. The constitutional validity of this provision has been upheld in Calcutta Chromotype case. The court rejected the contentions raised by petitioner that at least that part which confers jurisdiction over the officer to compel production of books beyond the period of three years was discriminatory. It was emphasized that scope of section 142 which prohibits assessing officer from requiring production of any account books relating to a period more than three years prior to the relevant previous year was different from that of section 131 and there was no impermissible discrimination granted.

4.3.1.1 Pendency of Proceedings for Exercising Jurisdiction

The requirement for pendency of proceedings is dependent on the particular sub section of section 131 under which the Income Tax Authority is exercising jurisdiction. Under sub section (1) which is general in nature, the officer can exercise jurisdiction only if there is a proceeding pending under the Act. No summons can be issued if assessment proceeding has been concluded or had become time barred in respect of any year. However, the proceedings may not be pending against the same officer. Where the assessee company was assessed at Calcutta but was asked to appear before the Kanpur office, it was held that machinery provisions should be interpreted to make the machinery workable.

---

293 Calcutta Chromotype (P) Ltd. v. ITO, (1974) 95 ITR 595 (Cal).
This sub-section is subject to the provisions contained in sub-section (1A) and (2) under which pendency of proceedings is not a pre-requisite for exercise of power by the tax officials. Under sub-section (1A) of section 131 if the officer has reasons to suspect that any income has been concealed or likely to be concealed by any person or class of persons within his jurisdiction, then he can exercise powers notwithstanding that no proceedings is pending against such person or class of persons. Similarly, the recently added sub-section (2) empowers the income tax authorities to exercise powers for making inquiry or investigation in respect of persons in relation double tax avoidance agreements irrespective of the fact that any proceeding is pending or not.

4.3.1.2 Representation or Assistance of a Lawyer

Sometimes witnesses make request for being represented by a counsel, or a chartered accountant. In such cases, it has been categorically laid down that a witness cannot seek representation through a lawyer or a chartered accountant if personal presence is required by the income tax authority. The factum relating to personal presence is mentioned in the summons issued by such authority. Such assistance can also be denied in cases where the witness is under cross examination. When a partner is being examined as a witness in an assessment proceeding relating to a firm, he has no right to be represented by a representative although in such a case the firm has a right to be represented by an agent or a counsel. However, it would be a different matter where summon is issued by the authority who does not have jurisdiction for issue of such notice or summons.

The proceedings before the income tax authority are judicial proceedings within the meaning of section 193 of the Indian Penal Code, 1860. Hence, in

---

298 Jamnadas Madhvji & Co. v. ITO, (1986) 162 ITR 331 (Bom).
case the person gives false evidence before such authorities, a cognizance can be taken under the Criminal Procedure Code, 1973.  

4.3.1.3 Retaining and Impounding of Documents

Sub section (3) of section 131 empowers the income tax authorities to impound and retain in their custody any books of account or other documents produced before them in any proceeding under the Act. This power is subject to two restrictions contained in the section itself and any rules which are made in this regard. It would be appropriate to highlight that no rules have been framed in this regard. As far as other restrictions mentioned in the section are concerned, the authority is required to record reasons for impounding and they are prohibited to retain such books after a period of fifteen days. Any retention above this period requires approval from the Commissioner or Chief Commissioner as the case may be. It has been held that the pre requisite for exercising such powers is that the officers must first record the reasons for impounding and then pass an order impounding them.

There is a difference of opinion prevailing in relation to the effect in case of failure to communicate the orders of impounding. The Punjab and Haryana High Court has held that the orders of impounding are not vitiated in case where there is no communication as section 131 does not have any express provision to this effect. However, the Patna High Court has held that in view of the express law laid down by the Supreme Court in Oriental Rubber Works Case, the communication of recorded reasons is implicit under section

---

While relying on the same judgment from the Apex court, Delhi High Court has also upheld communication of orders and thus dissented with the judgment from the Punjab and Haryana High Court.

### 4.3.2 Power to Call for Information

Section 133 of the *Income Tax Act, 1961* vests the power to collect information regarding rent, interest, commission, royalty, brokerage or annuity from persons who pay them so that such information may help to spot new assessee or detect evasion of tax by existing assessee(s). The provision requires the names and addresses of the payees to be disclosed to the authorities mentioned in section on demand. Such information may also enable tackling of evasion by payer himself in case the payments are not genuine. A firm may be asked to furnish the names and addresses of partners with respective shares. An HUF may be asked to furnish the names and addresses of its Karta and other coparceners. Any person believed to be trustee; guardian or agent may be required to furnish the names and addresses of the person for whom he is acting in such capacity. Any assessee may be asked to furnish details of payments above the specified limit or any such higher amount in the nature of rent, commission, royalty or brokerage or any annuity. Any dealer, broker, agent or person concerned in the management of a stock or commodity exchange may be required to furnish the names and addresses of all persons with turnover exceeding such sums as may be prescribed in connection with any transfer by way of sale, exchange or otherwise. Any person including banking company may be required to furnish verified statement of accounts or affairs. Such information required may relate to any point considered relevant in the opinion of the assessing officer, which may be useful or relevant to any enquiry to proceeding under the Act.

---


304 *Polycast (Derbi) P. Ltd. v. ITO*, (1986) 52 CTR 298 (Del).
The Supreme Court has categorically laid down that it is clear from the mere reading of section 133 of the *Income Tax Act*, 1961 that it is not necessary that any inquiry should have commenced with the issuance of notice or otherwise before the powers could be invoked.\(^{305}\) It is with the view to collect information that power is given to issue notice. The second proviso makes it clear that such information can be sought where no proceedings are pending and the only safeguard being that before this power can be invoked, the approval from commissioner has to be obtained. The *Finance Act*, 2011 has inserted third proviso to below section 133 to provide that for the purposes of agreement referred to in section 90 and 90A, a notified income tax authority may exercise all such powers conferred under this section, notwithstanding that no proceedings are pending before it or any other income tax authority.

### 4.3.3 Search and Seizure

Ordinarily, search means ‘look for’ or ‘seek out’. The word has varied meaning under section 132(1). The Kerala High Court has held that this word should be given the general meaning, namely, look for or seek out. Its meaning should not be given a far too technical meaning and thereby indulge in a self defeating piece of sophistry.\(^{306}\) The issue relating to necessity of powers relating to search has arisen in various countries where democratic right to privacy is considered vital. In United Kingdom, the question whether the revenue officers should have the right was decided by Lord Justice Dennings M.R. while sitting in the Court of Appeal.\(^{307}\) While upholding this legislation it was observed that if this legislation is confined to the persons who

---

\(^{305}\) *Kamataka Bank Ltd. v. Secretary, Government of India & Ors.*, (2002) 175 CTR 405 (SC).

\(^{306}\) *Assainar v. ITO*, (1975) CTR 35 (Ker); The decision had been subsequently overruled in *CIT v. Tarsem Kumar*, (1986) 58 CTR 129 (SC) but the principle laid down in this case still hold good ground.

do not stop at tax avoidance and resort to large scale frauds, then it would be supported by all honest citizens. In United States, the power was so much abused that there was an outcry against such power and a fourth amendment was introduced against unreasonable searches. In India, the constitutional validity of the power relating search has been upheld by the courts while holding that Parliament had legislative competence to enact such provisions and they do not violate Articles 14 and 19 of the Constitution.\footnote{C. Venkata Reddy v. ITO, (1967) 66 ITR 212 (Mys); Roshan Lal & Co. v. CIT, (1966) 62 ITR 72 (Pun); Commissioner of Commercial Taxes v. Ramkishan Shrikishan Jhavar, (1967) 66 ITR 664 (SC); and Pooran Mal v. Director of Inspection (Investigation), 1974 CTR 25 (SC).}

4.3.3.1 Authorities Empowered to Conduct Search

Originally, there were five categories of officers who are empowered to issue search warrants under sub section (1) of section 132, namely, Director General, Director, Chief Commissioner, Commissioner and such deputy director or deputy commissioner as may be empowered by the board. The Finance (No. 2) Act, 2009 has made a clarificatory retrospective amendment to the effect that Joint Commissioner or Joint Director always had the power to issue authorization for search. This amendment has also empowered additional commissioners and additional directors to issue and sign authorization for search and seizure. The pre-requisite for exercise of power to issue search warrant is that such officer in consequence of information in his possession has reason to believe that:

(i) Any person to whom a summon or notice was issued to produce, or cause to be produced any books or other documents has omitted or failed to produce such books or documents as required by summons or notice;

(ii) Any person to whom a summons or notice has been or might be issued will not, or would not, produce or cause to be produced, any
books of accounts or other document which will be useful for, or relevant to any proceeding under the Act;

(iii) Any person is in possession of any money, bullion, jewellery or other valuable article or thing which represent either wholly or partly income or property which has not been or would not be disclosed for the purpose of the Act.

Information means statement of facts. It may have been supplied to the authorizing officer orally or in writing. It has been held that if the information was oral, propriety demanded that the officer should record notes of the same so as to assist him in coming to the conclusion that there is reason to believe and to use it to justify the said conclusion in event of necessity.\(^{309}\)

Information is to be distinguished from ‘rumor’ or ‘gossip’. Rumor is something vague or unverified. Information is something definite and verified. It should be not only authentic but must have rational connection with the requisite belief.\(^{310}\) Report of the intelligence wing of the department or report of income tax officer can be regarded as information by commissioner for issue of search warrant.\(^{311}\) Confidential information supplied by informer and verified by the authorizing officer can form basis for initiation of proceedings.\(^{312}\) Information received by other departments like Customs, Sales Tax, Police of Central Bureau of Investigation can also form basis after verification.\(^{313}\)

The most salutary safeguard on the exercise of power of issuing search warrant is existence of ‘reasons to believe’. It is made up of two words, namely, ‘reason’ and ‘to believe’. The words reason mean cause or justification and word believe connotes acceptance as correct or true or have faith in it. Before the officer has faith or accepts fact to exist there must

---

\(^{309}\) Om Parkash Jindal v. Union of India, 1976 CTR 316 (P&H).

\(^{310}\) Dr. Nandlal Tahiliani v. CIT, (1988) 69 CTR 91 (All).

\(^{311}\) Sudarshan & Co. v. CIT, 1978 CTR 424 (All).

\(^{312}\) Lit. Light & Co. v. CIT, (1980) 15 CTR 76 (All).

\(^{313}\) Vindhyaa Metal Corporation v. CIT, (1983) 36 CTR 238 (All).
be a justification for it. The belief may not be open to scrutiny as it is a final conclusion arrived at by the officer concerned as a result of mental exercise made by him on information received. However, the reason due to which the decision is reached can always be examined.\textsuperscript{314} When it is said that the reason to believe is not open to scrutiny, what is meant is that the satisfaction arrived at by the officer concerned is immune from challenge, but, where the satisfaction is not based on any material or it cannot withstand the test of reason, which is an integral part of it, then it falls through and court is empowered to strike down.\textsuperscript{315} However, although a mere suspicion may not be sufficient, a conviction of nature required in criminal case cannot be insisted upon and standard of belief should be that of a reasonable man.\textsuperscript{316}

The term ‘reason to believe’ must be distinguished from ‘reason to suspect’ and ‘is satisfied’. If there is a mere ‘reason to suspect’ as distinguished from ‘reason to believe’ the action based thereon would be invalid though subsequent discovery confirms the suspicion.\textsuperscript{317} The words ‘is satisfied’ refer to the subjective element in the process while the words ‘reason to believe’ indicates that there should be nexus between reasons and belief.\textsuperscript{318}

4.3.3.2 Powers of the Competent Authorities in a Special Case

The first proviso to sub section (1) of section 132 of Income Tax Act, 1961 provides for a situation when any building, place etc. is in the area which is within the jurisdiction of any chief commissioner or commissioner but such officer has no jurisdiction over the person. In such situation, according to this proviso, it shall be competent for him to issue search warrant provided he has reasons to believe that any delay may be prejudicial to the interests of

\textsuperscript{314} Ganga Prasad Maheshwari v. CIT, (1981) 21 CTR 83 (All).
\textsuperscript{315} Shyam Jewellers & Ors. v. CIT, (1992) 196 ITR 243 (All).
\textsuperscript{316} Omparkash Jindal v. Union of India, (1976) 104 ITR 389 (P&H).
\textsuperscript{318} Dr. Partap Singh v. Director of Enforcement, (1985) 46 CTR 319 (SC).
revenue.

The second proviso to sub section (1) of section 132 provides for a situation where it is not possible or practicable to take physical possession of any valuable article or thing or remove it to a safe place due to its volume, weight or other physical characteristic. In such a situation, according to second proviso, the authorized officer is competent to serve an order on the owner or the person who is in immediate possession or control of such valuable article or thing, that he shall not remove, part with or otherwise deal with it except with permission of authorized officer.

Sub section (1A) of section 132 contemplates a situation where an authorizing officer has issued search warrant in favor of authorized officer but it is suspected thereafter that incriminating books of account and other documents and assets representing undisclosed income or property are kept not in a building, place etc. in relation to which such search warrant has been issued but in a different place, building etc. In such a situation any chief commissioner or commissioner can authorize aforesaid officer to take action in respect of such other building, place etc. in which such books of account, other documents are suspected to have been kept, provided such authorizing officer in consequence of information in his possession has reason to suspect that they have been kept in such place or building.

4.3.3.3 Powers of Authorized Officers Conducting Search

In addition to the powers vested in the authorized officers under special cases, there are certain general powers which can be exercised by them while conducting search and seizure operations. They are authorized to enter and search any place, building, vessel, vehicle, aircraft where reason to suspect is there. They may break open any lock, box, door, safe, almirah where the keys are not available and search any person. They can seize any
books of account, other documents and things found as a result of search. In addition to these powers, they may take assistance from police and other employees of Central Government; pass prohibitory orders etc.

4.3.3.3.1 Assistance from the Police and the Central Government Employees

The authorized officers are empowered to requisition the services of any police officer or any officer of the Central Government or of both by way of assistance to him in due execution of search warrant.\textsuperscript{319} Such assistance is necessary for entering the premises to be searched, making search in such premises, making seizure of incriminating material and taking other incidental actions. It is the duty of such police officer(s) and the officer of Central Government to render such assistance.

4.3.3.3.2 Passing of Prohibitory Orders

Sub section (3) of section 132 empowers the authorized officer to issue prohibitory order in respect of books, documents and/or other valuable articles. Such prohibitory orders have same effect as of a restraint order passed under second proviso to sub section (1). The difference between these two provisions lies in the reason for which they can be passed. The main reason for which restraint order could be passed under second proviso to sub section (1) of section 132 was immobility of the thing. However, if this reason is absent, the provisions of sub section (3) shall apply. Hence, both these provisions are mutually exclusive.

Prior to insertion of explanation, with effect from 1 April 1989, clarifying that a prohibitory order would not be deemed to be ‘seizure’ there was conflict of

\textsuperscript{319} Sub section (2) of section 132 of the Income Tax Act, 1961.
judicial opinion that whether it amounted to seizure. However, the explanation has put an end to this controversy. The Apex court, while explaining the law relating to prohibitory orders, has held that such order can be passed only in regard to a person in immediate possession or control of the thing. The words ‘possession’ and ‘control’ have been used in popular sense and not in technical sense. In Balakrishan Nair’s case, the Kerala High Court while explaining the concept of prohibitory orders dealt with a question that whether keeping of books or documents in a room or almirah under the seal is proper procedure of prohibition. The court categorically laid down that there no infirmity in doing so after the prohibitory order has been passed.

4.3.3.3 Examination on Oath of Persons Found in Possession of Books and other Material

Sub section (4) of section 132 of the Income Tax Act, 1961 empowers an authorized officer to examine on oath, during the course of search or seizure, any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery, or other valuable article or thing. This sub section provides that any statement made by such person during the examination may thereafter be used in evidence in any proceeding under the Act. The words ‘during the course of search’ highlight that if a person is examined before the search began, the statement would not be one contemplated under this section. Only the person who is in possession or control of any books or documents etc. can ordinarily be examined. The normal interference is that any person who is the occupant of the place searched is liable to be examined as he is presumed to be in

---

possession. Mere presence of a person as a visitor would not authorize the officer to exercise his powers.

4.3.4 Power of Survey

Survey as compared with the search and seizure is an easy method for detection of tax evasion. Search and seizure is drastic in nature and invades privacy of citizens to such an extent that it is wholly undesirable for a civilized society and can be tolerated only as necessary unavoidable evil. It requires large number of officers who cannot be found very easily. Hence, searches can be and should be conducted only in cases involving a substantial tax evasion although this power is often abused and is exercised in cases involving small amounts resulting in unwarranted harassment of innocent citizens. Thus, the power relating to survey presumes importance. Survey provisions are not drastic in nature and extent of invasion of privacy involved therein is to barest minimum. The main objectives of conducting survey are as follows:

(i) To find that the person carrying on business maintains regular books of account;
(ii) To check the correctness of entries in such books of accounts;
(iii) To tally cash in hand and stock in trade with the entries in account books;
(iv) To detect any unaccounted documents indicating unaccounted purchases and sales etc.
(v) To detect any other valuable article(s) or thing(s) connected with business which is not disclosed in books of account.

However, it is not unusual to convert survey into search. This may be permissible where information collected during survey would justify exercise of the power of search. Even during survey operations, the income tax authorities can apprise the commissioner of income tax for a case of search and survey operations may itself be converted into search.
4.3.4.1 Authorities Empowered to Conduct Survey

There are seven income tax authorities, namely, Commissioner, Deputy Commissioner, Director, Deputy Director, Assistant Director, Income Tax Officer, and Inspector of Income Tax who are authorized to conduct survey operations. After an insertion of proviso by the Finance Act, 2003 the power to conduct survey by deputy director and all officers below his rank has been subjected a prior approval of joint director or joint commissioner. This amendment has also inserted tax recovery officer within the purview of officers empowered to conduct survey.

Such authorities are usually assigned an area to exercise their jurisdiction or they may be given jurisdiction in respect of a particular class of assessee(s). They are empowered to enter into any place at which business or profession is carried on and which is within limits assigned to them. It may or may not be a principal place of business. According to Circular Number 7D(LXIII) of 1967 dated 3 May 1967, business or residential premises of third parties, including a chartered accountant, a pleader or income tax practitioner, of whom the assessee may be a client are not places which could be entered into for purpose of survey. However, after a substitution of provisions relating to survey in 1975, an extended meaning has been provided to the term ‘Place of Business’. Now, it includes any other place where the assessee states that any books or other documents relating to his business are kept. Thus, if at the time of survey, the concerned person states that his books or documents have been kept in office of his chartered accountant or income tax practitioner, the survey officer can enter into such premises for limited purpose. Where there was no material on record to show that survey of premises of firm of chartered accountant was undertaken consequent upon any statement of his client it was held that the survey conducted was without the authority of

The income tax authority after entering such place may require proprietor or employee or any other person present and attending the business to comply with their directions. They may require such person to afford them the necessary facility to inspect books or other documents as they may require or which may be available at such place. They may require such person to afford them the necessary facility to check or verify cash or stock or other valuable thing which may be found therein. They may also require such person to furnish further information as may be useful or relevant to any proceeding under the Act. The Income Tax Act, 1961 empowers such income tax authorities to place identification marks; make extracts from books or other documents; prepare inventory of cash, stock or other valuable article or thing; and record statement of persons which may be helpful or relevant to any proceedings under the Act. In case the taxpayer fails to cooperate with the department, the income tax authorities conducting survey become entitled to exercise all powers under section 131 of the Income Tax Act, 1961.

Powers of all income tax authorities are uniform with an exception to income tax inspectors. The inspectors have limited powers of survey which can be authorized only in regard to following three activities:

(i) Inspect books or other documents which are available at the place of survey [Section 133A (1) (i)];

(ii) Place marks of identification on the books of account or other documents and make extracts or copies there from [Section 133A (3) (i)]

(iii) Collect information from the assessee or any other person as regards expenditure incurred in connection with any function, ceremony or event and record statement of assessee or any other person [Section 133A (5)].

---

The entry for purpose of survey can be made only during the hours at which such place is open for the purpose of conduct of business or profession. This restriction about time is regarding making of entry. If the entry is lawfully made during business hours, there is no prohibition against continuance of survey operations beyond business hours. However, in Shyam Jewellers Case, it has been categorically laid down that sealing of business premises after the income tax authorities have left on the pretext that survey or search is still continuing is bad in law and unauthorized.326

4.3.4.2 Impounding and Retention of Books

Law relating to impounding and retention of impounded books has changed over a period of time. Prior to 1 June 2002, the income tax authorities conducting survey were prohibited from removing or causing to be removed any books or other documents or cash, stock or other valuable article. This position has been upheld in number of judgments.327 The Finance Act, 2002 amended this position with effect from 1 June 2002 and authorized the income tax authorities conducting survey to verify and make an inventory of cash, stock or other valuable article; record the statement of any person; inspect books of account or documents; place marks of identification; and also impound and retain in his custody books of account or other documents after recording reasons for doing so. Such books could be retained by the authority for only fifteen days without the approval of Chief Commissioner or Director General or Commissioner or Director. The Finance Act, 2003 has reduced this limit to ten days without such approval. The Karnataka High Court has held that the power of approval given to the higher authority cannot be interpreted in a manner so as to understand that retention can be

extended up to three or four years. The whole object of the Act is to peruse the books for some purpose of determining tax liability and nothing beyond.\textsuperscript{328} Any retention without recording the reasons or without examining the books has been held to be illegal.\textsuperscript{329} However, the Apex court has declared that even though the retention of books was found to be illegal, the department was entitled to use the same.\textsuperscript{330}

\textbf{4.3.5 Power to Make Reassessment in Cases where Income has Escaped Assessment}

The cardinal principle relating assessment sates that assessment once made should not be allowed to be tampered with by the assessing officer at his sweet will or pleasure. The other principle says that the powers relating to reassessment must be conferred by the income tax statute as the exchequer should not be deprived of tax on income which has escaped assessment. Thus, to resolve the point between these two principles, the income tax statute should confer the powers relating to reassessment but with proper checks and balances so that the assessing officer may not exercise it on his sweet will.

Section 147 of the \textit{Income Tax Act}, 1961 empowers the assessing officer to bring to tax income which has escaped assessment. Even though the word used is ‘reassessment’, but it may apply to a case as first assessment when the assessee has not furnished the return of income at all. The checks which are intended by the legislature are covered under various provisions such as follows:

- Conditions precedent for assumption of jurisdiction relating to

\textsuperscript{328} Subha and Prabha Builders (P) Ltd. v. ITO & Anr., (2009) 225 CTR 90 (Kar).
\textsuperscript{329} U. K. Mahapatra & Co. & Ors. v. ITO & Ors., (2009) 221 CTR 328 (Ori).
reassessment has been mentioned.\textsuperscript{331} In addition, there are certain situations in which it shall be deemed that income chargeable to tax has escaped assessment;

(ii) Notice has to be given before proceeding with reassessment and the reasons must be recorded for issuance of such notice;\textsuperscript{332}

(iii) Time limit has been prescribed beyond which notice cannot be issued;\textsuperscript{333}

(iv) Sanction has to be obtained from a higher authority before issue of notice in certain situations;\textsuperscript{334}

(v) Time limit has been prescribed within which the reassessment proceedings are to be completed and order is to be passed.\textsuperscript{335}

The different aspects of this power relating to reassessment in cases where income has escaped assessment is discussed under following sub heads.

\textit{4.3.5.1 Machinery Provision}

The Privy Council, while observing the nature of these provisions held that the section, although is a part of taxing statute, imposes no charge on the subject, and deals merely with the machinery of assessment. In interpreting provisions of this kind, the rule is that construction should be preferred which makes the machinery workable.\textsuperscript{336} This view has been further endorsed by various courts in India.\textsuperscript{337} However, the Delhi High Court has held that even though it is a machinery provision, the same has to be strictly construed as a

\textsuperscript{331} Section 147 of the \textit{Income Tax Act}, 1961.
\textsuperscript{333} Section 149 and 150 of the \textit{Income Tax Act}, 1961.
\textsuperscript{334} Section 151 of the \textit{Income Tax Act}, 1961.
\textsuperscript{335} Section 153 of the \textit{Income Tax Act}, 1961.
\textsuperscript{336} CIT v. Mahaliram Ramjidas, (1940) 8 ITR 442 (PC).
penal provision. If the conditions mentioned in that section are not fulfilled then no action under that provision can be taken.\textsuperscript{338}

4.3.5.2 Income Escaping Assessment

When liability to pay tax is evaded by one method or other, there is an escapement of assessment. The term ‘escaped assessment’ includes both non-assessment as well as under-assessment. When a person is not assessed to tax though he is liable to be taxed he escapes assessment.\textsuperscript{339} In a case where dealer had not filed prescribed return of his turnover at all, it was held that it is a case of ‘escaped assessment’.\textsuperscript{340}

4.4 International Organizations

Apart from the taxation departments of respective countries, there are certain international organizations which are working in the field of international taxation. The most prominent and important organizations are the United Nations and Organization for Economic Cooperation and Development. Their importance can be judged from the fact that the model conventions promulgated by these two organizations form the very basis of all the tax treaties existing between different countries. The other organizations working in this field can be broadly classified into three heads, namely, international tax organizations, taxpayers’ organizations and organizations of tax administrators. All these organizations have been discussed hereunder following sub heads.

4.4.1 The United Nations

\textsuperscript{338} S. Jaswant Singh v. CIT, (1968) 67 ITR 175 (Del).

\textsuperscript{339} Tax Officer cum Regional Transport Officer & Ors. v. Drug Transport Co. (P) Ltd., (1972) 85 ITR 156 (SC).

The United Nations is an intergovernmental organization whose stated aims include promoting and facilitating cooperation in international law, international security, economic development, social progress, human rights, civil rights, civil liberties, political freedoms, democracy, and achievement of lasting world peace. The organization has six principal organs, namely, the General Assembly, the Security Council, the Economic and Social Council, Secretariat, the International Court of Justice and the United Nations Trusteeship Council. There are a number of other subsidiary organs which report directly to these principal organs and are considered to be integral part of United Nations. From the taxation point of view, the principal organ of Economic and Social Council, and its subsidiaries play a significant role.

4.4.1.1 The Economic and Social Council

The Charter of the United Nations envisages the establishment of the Economic and Social council with fifty four members who are elected by the General Assembly. Each member is represented by one representative for a term of three years. This organ is free to develop its own procedure including the method of selecting its president. The meetings take place in accordance with such rules and the decisions are taken through a majority voting of members present. Each member has one vote. The matters which fall within the competence of the Economic and Social Council are international economics, social, cultural, educational, and health related.

342 Charter of The United Nations, 1945, Article 7(1).
343 id., Article 7(2).
344 id., Chapter X: The Economic and Social Council.
345 id., Article 61.
346 id., Article 72.
347 id., Article 67.
matters.\textsuperscript{348} The tasks which can be performed by the council in relation to the matters falling within its competence include:

(i) Making or initiating studies / reports and submitting recommendations to the General Assembly;

(ii) Making recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all;

(iii) Preparing draft conventions for submission to the General Assembly on matters within its competence;

(iv) Calling international conferences on matters falling within its competence.\textsuperscript{349}

The Economic and Social Council is assisted by various subsidiaries which report directly to the council. The subsidiaries are classified under various heads, namely, Functional Commissions, Regional Commissions, Standing Committees, Ad Hoc Bodies, Expert Bodies composed of Governmental Experts, Expert Bodies composed of Members serving in their Personal Capacity and other related bodies. The different committees which are included under Expert Bodies composed of Members serving in their Personal Capacity are Committee for Development Policy; Committee on Economic, Social and Cultural rights; Committee of Experts on International Cooperation in Tax Matters; Committee of Experts on Public Administration; and Permanent Forum on Indigenous Issues. The work of all these committees is directly or indirectly related to the international economics and taxation. However, the work done by Committee of Experts on International Cooperation in Tax Matters is directly contributing towards growth and development of international tax regime.

\textit{4.4.1.2 Committee of Experts on International Cooperation in Tax Matters}

The Ad Hoc Group of Experts on Tax Treaties between Developed and

\textsuperscript{348} id., Article 62.

\textsuperscript{349} id., Articles 62-66.
Developing countries was established in 1968. In 1980, the Economic and Social Council gave a broad title to the group, namely, Ad Hoc Group of Experts on International Cooperation in Tax Matters and increased its membership from twenty to twenty five members drawn from tax administrators of ten developed and fifteen developing countries and economies in transition. The mandate of the group was further broadened to include the tax treaties between developed and developing countries as well as bearing on international cooperation in tax matters. Therefore, the Group of Experts examines, transfer pricing; mutual assistance in collection of debts and protocol for the mutual assistance procedure; treaty shopping and treaty abuses; interaction of tax, trade and investment; financial taxation and equity market development; tax treatment of cross-border interest income and capital flight; and taxation of electronic commerce. Finally, in 2004, the council renamed the Group as Committee of Experts on International Cooperation in Tax Matters.

The Committee of Experts on International Cooperation in Tax Matters as a subsidiary body of the Economic and Social Council is responsible for keeping under review and update, as necessary, the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. It also provides a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities and assesses how new and emerging issues could affect this cooperation. The Committee is also responsible for making recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition. In all its activities, the Committee gives special attention to developing countries and countries

---

with economies in transition.\footnote{Retrieved from http://www.un.org/esa/fdf/tax (last accessed on 21 September 2013).}

### 4.4.1.2.1 Methods of Work

The Committee formulated its working methods during its first session. Subsequently, ECOSOC, in its resolution 2006/48 recognized that the Committee agreed to create, as necessary, ad hoc subcommittees composed of experts and observers who would work throughout the year to prepare and determine the supporting documentation for the agenda items for consideration at its regular session. It recommended that subcommittees should use electronic communications where possible, but recognized that the efficient operation of these subcommittees may in future require some face-to-face meetings. The same resolution, requested the Secretary-General to establish a trust fund to receive voluntary contributions from Member States and other institutions interested in providing financing for the Committee’s activities in supporting international cooperation in tax matters, including support for the participation of experts from developing countries.

The Committee has relied heavily on its subcommittees and working groups for its work, especially in relation to updating the UN Model. The subcommittees and working groups focus during the year on certain issues related to the Model and then present options, including specific wording for review and adoption by the Committee during its annual sessions. The subcommittees have also been instrumental in taking forward the Committee’s work on revision of the \textit{Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries} and on drafting of the UN Transfer Pricing Manual for Developing Countries, as well as in implementing other aspects of the Committee’s mandate such as in the areas of new and emerging issues affecting international cooperation in tax
matters and capacity building. As they fulfill their mandates, the subcommittees and working groups are dissolved by the Committee.\textsuperscript{353} There are currently seven subcommittees and one working group. The subcommittees are, namely, United Nations Model Tax Convention Update, Tax Treatment of Services, Dispute Resolution, Transfer Pricing - Practical Issues, Capacity Building, Exchange of Information, Revision of the Manual for Negotiation of Tax Treaties, and Capital Gains. The working group is named as Tax Treaty Issues Related to Climate Change Mechanisms.

4.4.1.2.2 Documents and Publications

There are a number of documents which are related to the work of the committee, namely, Background Papers, Economic and Social Council Resolutions, Reports of Secretary-General, and Reports of the Committee which are available in freely downloadable format from their web page.\textsuperscript{354} These documents contribute towards the development of international tax regime. Apart from these documents, the committee also comes out with various publications like the United Nations Model Double Taxation Convention between Developed and Developing Countries, the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, 2011 update to model convention, and country specific updates on Russia and Spain. These publications are available in both print and computer format.

4.4.2 Organization for Economic Cooperation and Development

The Organization for Economic Cooperation and Development (OECD) is an inter-governmental organization which has three main organs, namely,


Council, Committees and Secretariat. The Council is the decision making body of the OECD and is made up of one representative per member country and a representative of the European Commission. The Council meets regularly at the level of permanent representatives to the OECD and decisions are taken by consensus. The Council also meets at ministerial level once a year to discuss key issues and set priorities for the OECD work. These meetings are chaired by the Secretary General and the work mandated by the Council is carried out by the OECD Secretariat.

The OECD Secretariat is headed by Secretary General who is assisted by one or more Deputy Secretaries-General. The Secretariat is made up of more than two thousand five hundred staff members including economists, lawyers, scientists, and other professionals. Most staff members are based in Paris but some work at the OECD centers in other countries. It carries out the work in response to priorities decided by the OECD council. It also provides supporting activities to the committees of the OECD.

The representatives of thirty four countries meet in specialized committees to advance ideas and review progress in specific policy areas, such as economics, trade, science, employment, education or financial markets. There are about two hundred and fifty committees, working group and expert groups.

The above mentioned the OECD’s organs are working on diversified topics ranging from agriculture fisheries to trade and tax. Presently, there are around twenty six areas or topics on which the OECD is working. As far as taxation is concerned, the OECD has further taken into account the different facets of this topic like aggressive tax planning, consumption tax, dispute resolution, exchange of information, fiscal federalism network, global relations in taxation, public finance, tax administration, tax policy analysis, tax treaties,

http://www.oecd.org/about/whodoeswhat (last accessed on 04 October 2013).
transfer pricing and tax crime. The main focus of the activities relating to taxation is on base erosion and profit shifting; automatic exchange of information; global forum on transparency and exchange of information for tax purposes; and tax inspectors without borders. All these focus areas are crucial from prevention of international tax evasion and avoidance and have been discussed under following sub heads.

4.4.2.1 Base Erosion and Profit Shifting

The word ‘base’ refers to the tax base of a particular country. The term ‘base erosion and profit shifting’ refers to those activities by which the business houses or taxpayers shift their profits from a particular jurisdiction and cause base erosion. The OECD defines this term as tax planning strategies that exploit gaps and mismatches in tax rules to make profits ‘disappear’ for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low resulting in little or no overall corporate tax being paid.\(^{356}\) These strategies may be legal or illegal but undesirable in any case. The major reasons for being considered as undesirable are that they cause distortion of competition, inefficient allocation of resources and are against the principle of fairness.

The OECD is performing key role in countering strategies relating to base erosion and profit shifting as unilateral and uncoordinated actions by governments may have a negative impact on investment, growth and employment globally. The ‘BEPS Action Plan’ which is prepared by the OECD provides for a consensus based plan to address these strategies.\(^{357}\) This action plan is a part of the OECD’s ongoing efforts to ensure that the global tax architecture is equitable and fair.


4.4.2.2 Automatic Exchange of Information

As described by the OECD, automatic exchange of information involves systematic and periodic transmission of ‘bulk’ taxpayer information by the source country to the residence country concerning various categories of income (e.g. dividends, interest, royalties, salaries, pensions, etc.). It can provide timely information on non-compliance where tax has been evaded either on an investment return or the underlying capital sum even where tax administrations have had no previous indications of non-compliance.\textsuperscript{358}

The OECD is developing a standardized, secure and cost effective model of bilateral automatic exchange for the multilateral context. Such standardized model requires a legal basis for exchange of information. The OECD is developing two documents which provide for such legal basis, namely, Article 26 of the OECD model tax convention and multilateral convention on mutual administrative assistance in tax matters. Few advantages of standardization process are simplification, higher effectiveness and lower costs for all stakeholders concerned. On the other hand, proliferation of different and inconsistent models would potentially impose significant costs on both government and business to collect the necessary information and operate the different models.\textsuperscript{359}

4.4.2.3 Global Forum on Transparency and Exchange of Information for Tax Purposes

The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) is the continuation of a forum which was created in the early 2000s in the context of the OECD’s work to address the risks to tax compliance posed by tax havens. The original members of the Global Forum

\textsuperscript{358} For details, visit http://www.oecd.org/ctp/exchange-of-tax-information/automaticexchange.htm (last accessed 28 October 2013).

\textsuperscript{359} Ibid.
consisted of the OECD countries and jurisdictions that had agreed to implement transparency and exchange of information for tax purposes. The Global Forum was restructured in September 2009 in response to the G20 call to strengthen implementation of these standards. The Global Forum now has one hundred and twenty members on equal footing and is the premier international body for ensuring the implementation of the internationally agreed standards of transparency and exchange of information in the tax area. Through an in-depth peer review process, the restructured Global Forum monitors that its members fully implement the standard of transparency and exchange of information they have committed to implement. It also works to establish a level playing field, even among countries that have not joined the Global Forum.360

4.4.2.3.1 International Standard of Transparency and Exchange of Information

The international standard of transparency and exchange of information is contained in various international documents like the OECD Model Tax Convention and its commentary, the OECD Model Tax Information Exchange Agreement and its commentary and the UN Model Tax Convention. This standard can be presented as a triangle.

The transparency triangle has three pillars, namely, availability, access and exchange of information. The centre of this triangle is information. Therefore, the international standard requires that information must be available, competent authority must have access to the information, and there must be a legal basis for exchange of information on request\textsuperscript{361}. The level of compliance with the international standard is determined by ‘Terms of Reference’ adopted by the Global Forum in February 2010. The Terms of Reference which are developed by the Peer Review Group and agreed by the Global Forum divide international standard into ten essential elements against which jurisdictions are reviewed.\textsuperscript{362}

### 4.4.2.3.2 Peer Review Process

The peer review process is undertaken by the Peer Review Group, staff of the Global Forum Secretariat, the assessors (provided by the member countries) and the officers in the jurisdiction which is under review. The Peer Review Group was formed soon after the restructuring of the Global Forum in September 2009. This Group consists of one chair (France), four vice chairs (India, Japan, Singapore and Jersey) and other members (Argentina, Mauritius, Brazil, Mexico, British Virgin Islands, Norway, Cayman Islands, St. Kitts and Nevis, China Samoa, Germany, South Africa, Indonesia, Spain, Isle of Man, Switzerland, Italy The Bahamas, Korea, The Netherlands, Luxembourg, United Kingdom, Malaysia, the United States and Malta). The review process is comprised of two phases. The first phase assesses the quality of jurisdiction’s legal and regulatory framework for the effective exchange of information. The second phase review looks at the application of the international standard in practice. The Global Forum has completed seventy first phase


\textsuperscript{362} For details, visit \url{http://www.eoi-tax.org/keydocs/5e9fbe3d57f3a273e879ef33427e7954} (last visited 08 July 2013).
reviews, twenty six combined reviews and four stand lone second phase reviews.\textsuperscript{363}

These review processes are effective in ensuring the implementation of international standard as the jurisdictions which are reviewed under this process implement the recommendations made to them. The following facts which highlight the effectiveness of this process needs due consideration:

(i) Sixty Eight Jurisdictions have provided follow up reports describing actions they have taken to implement recommendations.

(ii) Thirty Eight jurisdictions have improved their powers to access information under their domestic laws.

(iii) Fifty three jurisdictions have improved their legislation to ensure the availability of accounting and ownership information.

(iv) More than one thousand one hundred new bilateral arrangements (Double Tax Conventions / Protocols / Tax Information Exchange Agreements) have been signed that allow for exchange of information in accordance with international standard.

(v) Forty four jurisdictions including forty two Global Forum members, have now signed the amended multilateral convention on Mutual Administrative Assistance in Tax Matters.\textsuperscript{364}

It may be noticed that the Global Forum provides technical assistance to jurisdictions in meeting standard and during review process but neither the Global Forum nor the OECD has the power to impose sanctions on countries that do not implement standard. It is the G20 which calls for countries to adopt international agreed standards. The G20 regularly monitors the functioning of Global Forum and acknowledges the work performed.

4.4.2.4 Tax Inspectors without Borders

\textsuperscript{363} Donal Godfrey, 2013, p. 661.

\textsuperscript{364} Ibid, at p. 663.
‘Tax inspectors without borders’ initiative shall be launched by the OECD in coming time. It will enable transfer of tax audit knowledge and skills to tax administrations in developing countries through a real time, ‘learning by doing’ approach. The OECD is planning to deploy experts with local tax officials on audits and audit related issues concerning international tax matters, and to share general audit practices.365

4.4.3 International Taxpayers’ Organizations

Non-residents, especially those who are non residents Indians, consider all such allurements and incentives as a positive step for getting fair and preferential treatment in India in the hands of the tax authorities and other governmental bodies and come to India with great expectations. More often their expectations are belied and they get disappointed, frustrated and find themselves miserable because of the unfair treatment meted out to them, although unintended. The taxpayers more often feel that they are being harassed by the revenue authorities and they do not get fair treatment because of the indifference of the authorities concerned to assist the taxpayer promptly and rightly.366

Such problems which are being faced by taxpayers in various other countries have given birth to international taxpayers associations. The two most prominent of them are the World Taxpayers Association and the Taxpayers Association of Europe. The noted aim of the World Taxpayers Association includes stimulating research on the effect of taxes and government spending on economic development; stimulating comparative study on public expenditure and taxation; stimulating contacts and exchange of information between different organizations; and spreading the taxpayers’

365 For details, visit www.oecd.org/tax/taxinspectors.htm.
The Taxpayers Association of Europe is a taxpayers’ movement which has grown out of the desire of citizens to protect themselves from increasing tax claims of government. It is a federation of twenty nine national taxpayers associations throughout Europe with more than one million members. It works towards a society with lower taxes and more individual freedom and wishes to stimulate efficiency in public sector.\(^\text{368}\)

### 4.4.4 Organizations of Tax Administrations

The problems are not only faced by taxpayers. This coin also has other side, which deals with the problems faced by tax administrations in respect of erring tax payers or to curb tax evasion and avoidance. Such problems have given birth to international tax administrators organizations. They are Inter American Centre of Tax Administrations, the Commonwealth Association of Tax Administrations and the Intra European Organization of Tax Administrations.

The Inter-American Centre of Tax Administrations (CIAT) supports the efforts of national governments by promoting the evolution, social acceptance and institutional strengthening of tax administrations, encouraging international cooperation and the exchange of experiences and best practices. It is a non-profit international public organization that provides specialized technical assistance for the modernization and strengthening of tax administrations. Founded in 1967, CIAT currently has 38 member countries and associate member countries from four continents: 31 countries of the Americas, 5 European countries, 1 African country and 1 Asian country. India

---

\(^{367}\) For details, visit [www.worldtaxpayers.org](http://www.worldtaxpayers.org).

\(^{368}\) For details, visit [www.english.taxpayers-europe.com](http://www.english.taxpayers-europe.com).
The Commonwealth Organisation for Tax Administrators is presently the largest organisation of tax administrators in the world with forty nine countries (including India) as its member. It helps promoting sustainable development and good governance in member countries through training programmes, technical conferences and knowledge sharing.\(^{370}\) The Intra-European Organisation of Tax Administrations (IOTA) is a non-profit intergovernmental organisation, which provides a forum to assist Members in the European countries to improve tax administration. The formal decision to establish the Organisation was made during the 3rd Conference of Tax Administrations of Central and Eastern Europe and Baltic Countries, which was held in Warsaw, on 28-30 October 1996. The European Commission, tax administrations from nine EU Member States, the IMF, OECD, CIAT and the US IRS supported this decision. In 1997 the operating conditions were formulated and the Charter of the Organisation was drafted. Simultaneously IOTA signed a Seat Agreement with the Republic of Hungary. To date, IOTA has 46 Member tax administrations; all of them are full Members. The Secretariat of the Organisation is located in Budapest, the Republic of Hungary.

4.5 Conclusion

It can be observed from the above discussion that the organisations dealing with the problem of international tax evasion and tax avoidance are operating at two levels, namely, national and international. At the national level, the tax departments of respective countries take the centre stage. Such departments are formed and operate in accordance with the statutes passed by the legislature of such countries. At the international level, however, there are different organisations like United Nations, the OECD,\(^{369}\) http://www.ciat.org/index Php/en/about-ciat.html.


\(^{370}\) http://www.catatax.org/.
taxpayers’ organisations and tax administrators’ organisations which are working on different aspects of international taxation regime.

In India, the Income Tax Department has been formed and is operating under the provisions of the Income Tax Act, 1961. This Act vests power of administration in ten authorities with the Central Board of Direct Taxes at the top. All these authorities have wide powers under different provisions of the Income Tax Act, 1961 which act as powerful tool against tax evasion. These powers include power regarding discovery and production of evidence; power to call for information; search and seizure; survey; and power to make reassessment. These powers are available against all assessee without any restriction as to residential status, the only restriction being that the person can be assessed in India. Thus, even the non residents entering into international transactions having tax implication in India can be subjected to such powers within India.

The international tax organisations are not formed under any Act and thus do not have administrative authorities functioning under them. They are usually non profit inter governmental organizations analysing and researching on various aspects of international tax regime. The measures proposed in their studies and reports are helpful in curbing international tax evasion and avoidance if adopted by respective countries. A comparative analysis of contributions made by organisations working at these two levels reveal that while international organisation are contributing towards the theoretical perspective of international tax regime, the organisations at national level are executing the provisions which are actually adopted by the national legislature of a particular country.