CHAPTER 5

ADMINISTRATIVE DIMENSIONS
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5.1 Importance of tax administration can hardly be over emphasised in the success or otherwise of any tax. Theoretically, tax administration is a tool for materializing the ends and ideals of a tax. Administration is an all pervading concept and encompasses number of problems pertaining to methods of assessment, collection, selection of the tax period, time of payment and size of administrative machinery and moreover there are problems of equity and justice also. As the noted legal adage goes "Justice should not only be done but it must also appear to have been done". The tax administration should cater for both the regions of discipline and simultaneously it must not be bereft of human touch in dealing with the tax matters. There should be a perfect amalgam both of theory and practice in the modus operandi of the tax administration. The tax administration should aim at accomplishing as far as possible all the canons of taxation viz. canon of convenience, canon of equity, canon of ability to pay, canon of economy etc. It must have some basic tenets on which the whole edifice of tax administration be erected. These tenets are shown in the following chart :

CHART 5.1 showing basic tenents of Tax Administration

| 1) Divorce from politics | 2) Entrusting Administration to experts | 3) Centralised control | 4) Combined staff that deal with cognate subjects |

At the same time it should not be blind for the human frailties in the matter of economic sacrifice that is involved in the payment of tax. The tax administration of income tax poses a still more peculiar position as in direct taxes the prick of sacrifice is apparent and hence administration should be awake to the phenomenon of tax evasion. In nutshell, tax administration in particular has to tackle the problems of assessment collection and tax discipline and it has also to consider the deterrent and penal remedies for malfeasance and misfeasance on the part of the tax paying subjects.

The purpose of this chapter is to evaluate the tax administration
5.2 Income has to be defined as the flow within a certain period. Generally taxpayers think of a year as a base for income taxation. But there is no sanctity about this period. In practice, a labourer may think of a week as the right time unit and the salary earner may consider a month as a proper time unit. Fixation of a time unit is more a matter of administrative convenience than a matter of any principle. None the less, it gives rise to many troublesome questions, the most important being due to the fluctuating character of incomes in certain businesses. If business men are asked to pay taxes every year on the basis of the profits of their previous year, a business man with an irregular income may suffer as against one with fixed income, especially when the income tax rates are progressive, and level of exemption is fairly high. Suppose, for example a firm has regular income of Rs. 40000 a year and the other firm has irregular incomes of Rs. 60000, 40000 & 20000. In the only sense of the word "Income" that matters both of them have equal incomes. Yet under the present system the first firm shall be paying Rs. 4500 in three years, the second will have to pay Rs. 6100. This is very unfair to those engaged in risky industries. To remove this defect various expedients have been suggested and resorted to. U.K. for example, had adopted for some years, the three year average system. This, however has other adverse effects; it hits a taxpayer hard when his income is falling and vice versa. The remedy to cure the evil is to evolve a system of set off and carry forward which in the Indian Income - tax system has been introduced with enactment of Amendment Act of 1939 which subsequently has been updated to this date.

The problem of time element in Indian Income tax.

The nominal basis on which the tax was levied was income occurring during the year of assessment in the 1886 Act. As a
matter of fact, this was only true in the case of income taxed at source. As regards other income, the previous year formed the real basis of assessment though it was held equal to the income of "present year". Hence forth the income of previous year used to be the tax base for assessment. Though the definition of previous year has undergone a few changes with the laps of time. Previous year means the financial year immediately preceding the assessment year.

The earning year as a matter of fact may vary from assesssee to assesssee. However, it is explicit from the language of section 3 that it allows for the plurality of the concept of the previous year. If the assesssee does not opt for any other period of 12 months preceding the assessment year shall constitute a previous year for him. Cases where Hijri (Sic) year has been followed as the previous year the following procedure might be adopted:

1) In all pending assessments where the assesses have been following lunar year as the previous year, will switch over to the financial year as the previous year and follow it in subsequent assessments.

2) If, in the first assessment to be made under the new procedure, there is a period prior to the financial year to be taken as the previous year, the income of which has not been assessed in the earlier assessment in income of such period plus the income of the relevant financial year should be taken as total income which should be assessed at the rate applicable to the income of the 12 months of the financial year.

3) Similarly, in the first assessment to be made under the new procedure, the income of any particular period which has already been assessed for the preceding assessment year has to be considered, it will be taken only for rate purposes.

4) The procedure to be followed proposed in (2) and (3) above will be subject to the assesssee agreeing there to.

The practice of previous year’s income being assessed to tax during the A.Y has some exceptions. There are certain cases where income of previous year is assessed to tax during the same year. For example, income of non-resident from shipping business, if in the opinion of Assessing officer, an assesssee is likely to transfer his property to avoid tax the total income of such person for the period from expiry of the previous year for the assessment year to the date when the Assessing officer commences proceeding under section 175 shall be chargeable to tax in the assessment year. In the case of discontinuance of the business, the income of the period from the expiry of the previous year for the assessment year in which the business is discontinued upto the date of such discontinuance may at the discretion of the Assessment officer be charged to tax in the assessment year.
Despite certain lacunae in the time element of a year as a taxation unit with the few modifications [viz. set off and carry forward provisions] and the assessment under sections 172, 174, & 176 a year as tax time unit has come to be universally accepted. After time element the next important factor is the administrative set up. The administrative set up connotes the schemata of the whole body of concepts that are needful for carrying out the ends of the tax. The most important is the personnel manning the institution which is essentially the machinery for the tax. In the next segment the administrative machinery is discussed.

5.3 Administrative practicability is the first sine qua non of all tax measures and systems. An excellent tax system, if incapable of enforcement, may lead not only to public irritation and ill-feeling but also defeat its own purpose. Very often a tax measure is ruled out only on the ground of its unworkability and rightly so. But the administrator’s task is not only to point out the impracticability of the tax measures but it has to make impracticable practicable and here is a challenge before the tax machinery.

It goes without saying that initially the tax machinery was of crude and preliminary nature. If one takes the historical probe into Indian Income Tax machinery it is found that in the first phase which Prof. V.K.R.V Rao rightly called it an experimental phase the tax machinery except in the city of Calcutta practically no new administrative agency was created. The working of tax was left in the hands of the land revenue officials. This state of affairs where the administration of income tax was left to the state Governments and *** new machinery was created continued till the 1922 Act when for the first time a separate machinery for income tax administration was provided for.

A close study of the Income Tax Manual, 1886 brings out the fact that though the collector was the nominal assessing head, the Mamalatdr or Tehsildar was the chief pillar of the system. This revenue officer acted as the the Income-Tax Deputy Collector for his division and attended to the assessment and collection of the tax. He was generally assisted by one or more assessors appointed by the Government.

Subject to the Collector’s approval, the Deputy collector framed detailed instructions for the assessors and a scheme of operations for their circles. Each assessor was furnished with a complete list of villages within his circle and also one of persons who had been liable to the repealed license-tax of 1880. He was also required personally to hold local enquiries in order to verify the correctness of the list and to prepare a revised list for assessment under the Act. In this task the subordinate revenue staff were directed to give him the full benefit of their
experience and knowledge. The assessor had then to submit his statement and returns to the Income Tax collector at headquarters. After proper scrutiny and revision, if necessary the Deputy-collector had to send on these returns to the collectors' office. On the strength of the information thus obtained the register of Assesses was to be prepared at the collectors' office. This register contained details of income and tax payable per different assesses, but was open for public inspection only as regards those whose incomes were less than Rs. 2000. It could be divided into parts covering entire villages and these parts were to be posted on the village post office or police station. It was also published in the local vernacular newspapers.

Thus, though the collector was nominally the supreme pillar of the system his work was largely carried out by his subordinates. The hierarchy was as shown in the following chart.

Chart no 5.2 showing hierarchy within Income Tax Machinery upto 1922.

Collector
  / V
Dy Collector
   V
Tehsildar
     V
Village officer (Patwari).

As has been said earlier though collector was the apex authority at the District level yet the major work was performed by his subordinates.

This administrative machinery was quite crude and preliminary, compared to the modern norms of income tax administration. For carrying out the then new tax this machinery was not an unmixed blessing. It has some points of strength and was replete with certain threats also.

The strength of this system was that the bottom personnel viz. village officers and Tehsildars they had close acquaintance with the people and this helped them to perform their duties more efficaciously. Tax evasion efforts were discouraged by their close acquaintance with the tax payers. But this had other side also. This proximity of relationship itself became an engine for nepotism and corruption. These officers adopted such modus operandi where their personal prejudices had full play in their assessment work. They performed their income tax assessment work in such a way so as to free their near ones and penalise those who were not in good terms with them. Sometimes it was found that heavy income tax assessment proved to be a tool in the tax assessing to avenge and vindicate their personal enmities.
Corruption reports and inefficiency was mainly responsible for the failure of I.T. in the early phase. The scheme of income tax machinery with state Governments continued up to Montague Reforms of 1919. After these reforms, the administration of Income tax was totally transferred with the Govt. of India domain and therefore this machinery proved quite redundant after the enactment of 1922 Act.

5.4 Machinery under 1922 Act.

Despite the weakness in the 1916 administration the evils thereof could not be mitigated because of the intervention of the First War. It was only at cessation of War in 1918 that reforms in administration system could be taken up which ultimately culminated in the enactment of 1922 Act.

The 1922 Act provided for administrative machinery in the following hierarchical order
1) The Central Board of Revenue.
2) Commissioners of Income Tax.
3) Assistant Commissioners
4) Income Tax Officers.
5) Income Tax Inspectors.

The Central Board of Revenue.

Under 1922 Act at the head of the income tax machinery of India was the Central Board of Revenue. Corresponding to the Board of Inland Revenue of Great Britain, Central Board of Revenue was created in India. It consisted of two civilian members and a secretary. The Board did not take any part in the actual assessment of the tax payer and in the hearing and disposal of tax appeals. It was indeed a superintending body, coordinating the activities of the different provincial Income-Tax Departments and securing uniformity among their procedure with regard to the assessment and collection of the tax. In matters concerning the principle of the tax, the Board was the supreme guiding body. The Board framed rules for the calculation of notional incomes wherever the real income was not ascertainable as was largely the case with regard to non-residents. They also fixed the mode of assessing certain special taxpayers such as insurance companies. They also issued forms of income tax returns, application of reference etc. The central Board of Revenue used to publish an annual Report entitled "The All India Income Tax Report and Returns" which contained the main income tax statistics for the year, both central and by provinces — preceded by a brief critical introduction. The Central Board of Revenue Act, 1924 continued till the enactment of Central Board of Revenue Act of 1963.

Commissioners of Income Tax.

Below the Central Board of Revenue were the different
commissioners of Income-Tax, who were the different heads of the different provincial departments. The commissioners did not take any active part in the assessment of the individuals' income. Their functions were largely supervisory. They checked the work of the Income-Tax officers and revised it wherever they deemed proper. Though they did not frame initial assessment, they could call for the relevant papers and review them, thereby effecting a revision of assessment. As regards the imposition of penalties, they constituted the appellate authority immediately above the Assistant Commissioners. They were also empowered to refer questions concerning income tax law to high courts, either at their own instance or at the instance of the assessee.

Assistant Commissioners.

Below the Commissioner of Income Tax were placed Assistant Commissioners who could number more than one in most of the provinces. The Assistant commissioners acted mainly as appellate authorities and heard appeals on questions of assessment. They did not ordinarily take part in the assessment of the tax payer, though cases were some times found in which they acted both as assessing and appellate authorities.

Income Tax Officers :- Next in order of seniority came the Income tax officers who formed the real backbone of the system. They were assisted by their subordinates, who were known as Deputy Income Tax officers in some provinces and Examiners of Accounts in others, these officers carried the bulk of the assessment in the province. They examined the returns of income filed by the asessees and demanded whenever necessary the presence of the assessee in person or by Deputy to explain the returns. They scrutinised the accounts of the assessee and other index of the assessee's income. They instituted guarded inquiries into his personal circumstances. In the absence of information they had to assess at their discretion. They were thus the vital part of the system and on them lay the responsibility for framing the assessments. They were also responsible for the timely collection of the tax. Appeals against their judgment lay with Assistant Commissioners.

As has been said above Income Tax officers were assisted by their subordinates viz Deputy Income-Tax officer or in some provinces Examiner of Accounts. A new category of statutory functionaries under the Income Tax Act was first introduced by the Indian Income Tax Amendment Act, 1953 with effect from 1st April 1953.

Inspectors of Income-Tax were called upon to perform such functions in the execution of the Act as were assigned to them by the Income Tax officer or other Income Tax authority under whom they were appointed to work and subordinate to such officer of authority.
5.5 Criticism of machinery under 1922 Act.

1) The first point of criticism is that the work of assessment and appeals lies in the hands of officials. As has been said in the Pre 1922 machinery of appeal that when appeals lay with the higher hierarchy with within the same cadre (revenue officials) the position amounts to acting a judge in one's own case. Here also appeal lying with the assessment officials is not far from the same anomaly as existed in pre 1922 machinery. In nutshell, there should be separation of execution from appeals.

2) Association of non officials with income tax work (either of assessment or of appeal) is wanting. The foreign practice is different. In Britain there is association of non official in income tax administration. Such an association may bring in its train certain advantages viz. it may be of special benefit because of the close acquaintance with the assesssees and the nature of business. But if the non officials selected do lack these elements it will not serve any purpose. But association of non officials with income tax work was a novelty in India. It was tried and failed. The usual tendency of the non officials is to be lenient to the rich and harsh to the poor. The British example in this matter should not prove very powerful in view of the admission of the British Royal Commission on Income Tax that really speaking it is the Inspector of Taxes who does the entire work of assessment.

Though the association of non officials is replete with limitations of its own in appellate institution their association could not be outright discarded.

5.6 Present Position.
The following authorities administer the 1961 Act.
i) The Central Board of Direct Taxes.
ii) Directors of Inspection.
iii) Commissioners of Income Tax, Commissioners of Income Tax (Appeals) and Additional commissioners of Income Tax.
iv) Appellate Assistant Commissioners of Income Tax.
v) Inspecting Assistant Commissioners of Income Tax.
vi) Income Tax Officers
vii) Inspectors of Income Tax.

i) Central Board of Direct Taxes:

Central Board of Direct Taxes, formerly called the Central Board of Revenue (CBR) and referred to in the Act as the "Board" is the highest executive Body in the official hierarchy administering the Income Tax Act. It was constituted by the central Board of Revenue Act with effect from 1st January, 1964. It is equipped with the general power of superintendence and control over the whole department. But the nature of its
jurisdiction is only advisory. It exercises statutory powers under certain circumstances.

Two of the most important powers of the Board are: 1) the power to issue orders, instructions and directions to the other Income Tax authorities, and 2) the power to transfer cases from one authority to another.

ii) Directors of Inspection: This class of officers was given statutory recognition in 1953 with retrospective effect from 1st April 1952. They took over the work of investigation of the income-Tax investigation commission when the different sections of 1947 (30 of 1947) were declared ultra-vires by the Supreme Court.

In practice today, the Directors of Inspection direct investigation of cases involving possible concealment of large incomes and requiring ultimate settlement on the lines formerly adopted by the investigation commission. The Directors are appointed by the Central Government and perform such functions of any other authority as may be assigned to them by the Board. There are separate wings of the Directorate which study reports from different places, the assessments completed, the arrears outstanding etc and helps the Board in several administrative and technical matters. "Directors of inspection" includes Additional Directors of Inspection, Deputy Directors of Inspection and/or Assistant Directors of Inspection. The Commissioners of income Tax are not subordinate to the Directors of Inspection; but the Inspecting Assistant Commissioners and Income Tax officers are. The Inspecting Assistant Commissioners are not subordinate to the Deputy Director of Inspection or the Assistant Director of Inspection. Specifically Sections 119(3), 131, 132, 132A, 133a, & 135 specifically refer to certain powers of Directors of Inspection.

iii) Commissioners of Income Tax

Commissioners of Income-tax are appointed by the Central Government. They perform their functions as directed by Central Board of Direct Taxes. 1) Earlier, one commissioner was appointed for each state and he was the head of the Income tax Department for that state. The commissioner is empowered to allocate work to Inspecting Assistant Commissioner and Income Tax officers and can also transfer cases from an Income Tax officer and may also issue direction to the effect that in certain cases any of powers or functions of the Income Tax officer shall in certain cases be exercised or performed on currently by the Inspecting Assistant Commissioner. All the Inspecting Assistant Commissioners and the Income Tax officers functioning within the state, function under the administrative control of the Commissioner. C.B.D.T. is empowered to give directions as to how Commissioners should perform their functions and the directions could also chart out the area of operations. Where any directions of the C.B.D.T. have assigned to two or more Commissioners the same area of the same persons or classes of persons or the same
incomes or classes of income or the same cases or classes of income or the same cases or classes of cases, they shall have concurrent jurisdictions subject to the orders of C.B.D.T.

There was a change in the position in 1967. The charges were introduced for facilitating the allocation and distribution of work in the Income Tax Department on a functional basis i.e. where two or more commissioners of Income Tax have been vested by the Board with jurisdiction in respect of the same area, persons or classes of persons, incomes or classes of incomes or cases or classes of cases. Section 121 has been repealed with effect from 1.4.1988.

Under 1961 Act Commissioners have several administrative and quasi-judicial functions to perform. Administrative functions range from recruitment and appointment of officers of class II service and Inspectors of Income Tax to work allocation and transfer of cases from one Income tax officer to another. He was to decide the place of assessment of an assessee where he comes under the jurisdiction of more than one Income Tax officer in his state. He is empowered to disqualify persons from practicing before an Income tax authority or the Appellate Tribunal. He is also empowered to grant stay of recovery proceedings.

Judicial functions of the C-I-T are:

1. Accordance or withdrawals of recognition to Provident Funds.
2. Accordance or withdrawal of approval to superannuation or Gratuity funds.
3. Grant of prior approval to the reopening by an Income Tax officer of an assessment after the expiry of four years from the end of the relevant assessment year.
4. Initiation of prosecutions against assessee and their abettors in certain circumstances.
5. Compounding of offenses initiated at 4 above.
6. Sanctioning prosecution of Income Tax officer for disclosing information which he is bound to keep confidential.
7. Disclosure of information to a third party as to the amounts of tax determined as payable by an assessee in certain circumstances.
8. Directing an Income Tax officer to prefer an appeal to appellate Tribunal against an order of the Appellate Assistant Commissioner.
9. Moving the Appellate Tribunal to refer to the High Court any question of law arising out of the order passed by the Appellate Tribunal against which the commissioner is aggrieved.
10. Moving the High Court to call for a statement of cases by Tribunal, in the event of the Tribunal refusing to state a case on the commissioners application as at above.
11. Preferring an appeal to supreme court from an order of the High Court.
12> Revisional Powers.

A new Appellate authority was created namely commissioners (Appeals) for the purposes of Income Tax Act with effect from 10th June 1978. The Commissioner of Income Tax (Appeals), function wise, is like the Appellate Assistant Commissioner exercising quasi judicial functions. Distribution and allocation of work among commissioners of Income Tax (Appeals), as among commissioners of Income Tax and Additional Commissioner of Income Tax, is done by the Board.

In 1970 a cadre of new functionaries was created. The Additional commissioner is an authority equal in rank to the commissioner. The word Commissioner in section 130 includes the Additional Commissioner. The additional Commissioner will have concurrent jurisdiction along with respective commissioner. The Additional Commissioner has, therefore the same power as the commissioner, inter alia, relating to revision under Sec. 263 and 264 of the Act. The aforesaid notification was held intra vires the Board and the contention that, for purposes of sections 263 and 264 the Commissioners of Income Tax is a persona designata was repealed. vide another notification which inter alia, empowered the Additional commissioner to discharge the functions of the Commissioner in the matter of reference to the High court. It has been held that this notification cannot be said to be in any manner inconsistent with any provisions of the Income Tax Act, much less the provision contained in sec. 130. A writ petition challenging the competence of the Additional Commissioner of Income-tax to file a reference application under sec. 256 was dismissed.

iv> Appellate Assistant Commissioner :- AACs have to perform their functions as the Board may direct where the Board assigns to two or more Appellate Assistant Commissioners the same area or the same persons or classes of persons, or the same classes of income, they shall perform their functions in accordance with the distribution or allocation of work marked out by the Board. The board cannot issue any orders, institutions or directions as would interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions. The powers and functions of the Appellate Assistant Commissioners are the same as those of commissioner of Income Tax (Appeals).

(v) Inspecting Assistant Commissioners :

(IAC) : These officers perform their functions in accordance with the directions of the Commissioner. If two or more Inspecting Assistant Commissioners are allotted the same area, or person or
classes of persons, etc, they perform their function in accordance with distribution or allocation of work made by the commissioner. They supervise the work of Income Tax officers under them and issue instructions to them whenever necessary and aid them whenever there is a difficulty on questions of law or accounts. In performing these supervisory functions, the Inspecting Assistant Commissioners have to act carefully, for while they have the general power to control and direct investigation, they cannot fetter the quasi judicial independence of the Income tax officers where the statute confers a duty on Income -tax officer and he has to perform it judicially, he has to act independently and not at the behest of a superior administrative authority.

Under special orders of the Commissioner of Income-Tax, they may assume the powers of an Income-tax officer, in which event all order passed by them in this special role can be reviewed in appeal by the commissioner of Income Tax, who himself assumes the role of an Appellate Assistant Commissioner in such cases. However these provisions have been repealed from 1st April 1988. Some very important functions of IAC are:

i) To accord approval for adoption of market value in regard to the transfer of a capital asset under section 52.

ii) To accord approval to a proposed order under section 104

iii) To accord approval to a penalty in cases were concealment exceeds Rs. 25000.

iv) To hear and draft objections to draft assessment orders.

v) To accord approval to a proposal for cancellation of the registration granted to a firm.

IAC’s were given power to approve penalties imposed to be levied by Income - Tax officers. During the period 1 April 1962 to 31 March 1976 they were entrusted to levy penalties themselves in cases where the minimum penalty imposable exceeded a particular limit. Originally Rs. 1000 and raised to Rs. 25000 w.e.f 1-4-1971 (Circular No. 56 dated 19. March 1971 paras 28 and 29, explaining amendments made by the Taxation Laws Amendment Act 1970) and from the penalty order of the IAC, a direct appeal to the Tribunal was provided by the statute.

These provisions have since been omitted and the Inspecting Assistant Commissioner now only approves of and does not himself impose any penalties.

VI> **Income - Tax officers.**

Income - tax officers constitute the pivot or king pin of the entire tax administration. They have to discharge their duties under the guidance, supervision and control of the Central Board of Direct Taxes, Directors of Inspection, Commissioners of Income Tax and Inspecting Assistant Commissioners of Income - tax. He calls for returns of income, hears the assessee's makes, the assessment, issues notice of demand and collects the taxes. He
prosecutes and contests appeals from his orders of assessments and grants refunds. He has the power to levy penalty for failure to file returns on failure to produce accounts and a power to levy penalty for concealment of income or for non-payment of tax. Income tax officer's functions are quasi-judicial and he must take his decisions after giving the assessee an opportunity of being heard even where there be no statutory provision to this effect.

**Inspectors of Income Tax.**

This class of income tax authority was given statutory recognition for the first time in 1953. The Inspectors are the eyes and ears of the Department. They function under the control of the income tax officer and generally make spot or outdoor inquiries and carry out surveys of localities to discover new assesses or sources of income not recorded in account-books. They are expected to keep in touch with all local developments and find out by careful inquiries the nature and scope of the business of persons, their local reputation, extent of earnings etc.

Besides, the above there are some other functionaries viz. Tax Recovery Commissioner and officers, (TRC) and Tax Recovery officer (TRO). A Tax Recovery Commissioner is a commissioner of income-tax or inspecting assistant commissioner in charge of recovery. TRO's functions are explained in sections 222 to 225 and the second schedule. The Tax Recovery officer may be an income-tax officer he may be some other officer of the Central or State Government as envisaged by section 2(44) which defines "Tax Recovery Officer" as meaning any TRO who may be authorized by the C.G.T to exercise the powers of a TRO. TRO may delegate any of his functions to his subordinate officers in certain circumstances. TRO's powers and function's are in relation to the recovery of the taxes and other amounts, inter alia, as if they were arrears of land revenue.

**Valuation Officers:** It is an expression to be found in Wealth Tax Act. It was also used in Estate Duty Act 1953 valuation officers have functions to discharge under the Income-tax Act, in relation to capital gains and acquisition of properties. This functionary is different from 'registered valuer' referred to in section 269C, 287A and section 55A. Registered valuer's are not to be confused with valuation officers. Registered valuer refers to certain persons who are only registered by the Government but are employed by assesses when they need their help in discharging some of their duties under the Act. They are in some respects, analogous to the Income Tax practitioners and other authorized representatives who appear on behalf of the assesses before the income-tax authorities.

**Settlement Commission:** The Taxation Laws Amendment Act 1975 made provisions for settlement of cases through the settlement...
commission. As a result, the Government of India has constituted a high-powered Income-Tax Settlement Commission. This commission functions within the Department of Revenue of Central Government which deals with direct taxes.

The commission consists of a chairman and as many Vice-chairmen and other members as the Central Government deems fit. Where a Member of the C.B.D.T. is appointed as the Chairman or vice chairman a Member of the Commission he ceases to be a member of the Board. The powers or functions of the commission shall be discharged by Benches Constituted by the Central Government from amongst the Members of the Commission. A bench shall be presided over by the chairman or vice chairman and shall consist of two other members.

The commission shall have the power to reopen completed proceedings, it shall be vested with all the powers that are vested in the Income tax authority. It will have a power to regulate its own procedure. It has a power to grant copies of any report. It has power to grant immunity from prosecution. Commission has also the power of sending a case back. Commission’s orders are conclusive as to the matter stated therein. However the supreme court held that article 136 of the constitution of India was wide enough to bring within the Supreme Court’s jurisdiction orders passed by the settlement Commission.

Upto now the income tax authorities are dealt with. The authorities are called upon to do the work of assessing the concerned assessee to income tax and here the crucial task of assessment sets in the initial step whereof is obtaining information pertaining to assesses total income the instrument for which is the "Return of Income."

5.7.1 "Return of Income" 

Under the first Income-tax Act of 1860 Returns from all who were liable to taxation were to be compulsorily filed. The system of compulsory returns proved a dismal failure. The Indian people had then just come out of an abortive attempt of war of independence. And British excesses during the suppression of (What they branded to be a mutiny) that war were still fresh in the memory of the people. In such circumstances the demand for personal returns of total income came to them as no less than but the first stage of an organised attempt at the wholesale confiscation. It was no wonder then that the returns were shamelessly false. They were so entirely untrust worthy as to mislead rather than guide the assessors in making assessments.

The Government, therefore, decided to suspend the clause relating to returns, and extended the operation of the assessment for the year 1860-61 to the succeeding year. The provision was found so convenient that it was renewed for the period of further three years.
Government thus, openly acknowledged the weakness of their assessing machinery and by taxing industrial and commercial income in 1864 on the basis of their assessment four years before reduced the income-tax merely to a farce. Income-tax then being a maiden venture such trial and error was but apparent in the then obtaining circumstances.

During 1886-1916 returns of income were not compulsory and even when submitted were traditionally and notoriously nebulous.

The assessment on such flimsy information obtained through such returns therefore was only inaccurate, imperfect and far from satisfactory.

Returns of income, therefore were made compulsory under the 1918 Act. Income-tax officers were also empowered to demand the production of accounts and other relevant documents. Non-compliance resulted in a loss of the right of appeal. The task of assessment was thus greatly facilitated.

Compulsory returns were vehemently resisted by the Indian people in the first experiment of 1860 Act. It was a natural reaction as an aftermath of the failure of disgruntled maiden attempt for obtaining independence. And the public opinion viewed the first experiment of Income tax in India with suspicion. But the position of compulsory returns under 1918 Act was differently founded. By this time Income tax had firm footing in Indian soil and public opinion could assimilate it if at all the fiscal weapon of Income-Tax was to work satisfactorily Compulsory returns was a necessity hence in 1918 Act there was no opposition to compulsory returns.

In nutshell the position of returns from 1860 to 1918 had been zigzag. To begin with in 1860 the return were compulsory then 1886 the compulsion element was done away with and it was again made compulsory in 1918.

**POSITION IN 1922 ACT.**

But in the 1922 Act a novel mode of returns was introduced. Public notice were printed in press calling upon assesses to file voluntary returns. The Income tax officers could also issue individual notices to assesses by registered post. Thus the assesses under the 1922 Act were required to file returns on having been called upon so to do either through general or personal notices. Thus under the 1922 Act I.T.O was required to send notices to all individuals - who he thought were liable to tax- asking for returns of their income in the prescribed form. Within a month of the receipt of the notice, persons to whom such notices were sent had to submit their returns - whether they were
liable or not. I.T.O could also call for the accounts of the assessee, summon witnesses and could take evidence.

So far as the provision of public notices through press is concerned it could be said that it was a farce only. Few assessee filed voluntary returns. As a matter of fact the practice of notice through press to the concerned is patently ridiculous. Thousands of rupees of the exchequer used to be wasted every year in printing in all the important Dailies of the country names of all the Income-tax officers with whom the assessee were supposed to file voluntary returns; and also in issuing thousands of individual notices to assesses by registered post. Under the 1922 Act it was permitted for assessee to file voluntary returns showing losses in business or under capital gains in order to get the benefit of set off and carry forward against future profits. Under the 1922 Act assessee could file voluntary returns at any time within four financial years from the end of the relevant assessment year.

Returns under the Present (1961) Act:

The principal divergence introduced by the present Act is that it has completely removed the force attendant with section 22(1) of the old Act. Hereafter all assessee, whether new or old, are required to file suo moto before the end of June a return of their total income if it exceeds the maximum exemptibility limit for the time being in force. Under the 1961 Act the liability to file voluntary return does not extend only to one's own income but also the income of another person. A non-resident also was held liable to file a voluntary return. In the original Act there was a provision of automatic scaling down of interest on reduction of tax as a result of rectification, revision or appeal there has been brought about in 1963 which permits complete waiver of interest in certain circumstance viz.

(i) where return is filed by agent of a non resident

(ii) Where the only source of income of the assessee is share in an unregistered firm assessed as registered firm u/s 183 (b)

(iii) Where a legal representative of a deceased files return u/s. 159 and

(iv) Where return is filed in back assessment under section 148.

The I.T.O has also a right to waive the interest if the assessee satisfies I.T.O. that he was prevented by sufficient course from furnishing return within time.

The rate of interest was raised from six to nine percent in 1967.

The time limit for belated returns was initially the four
years from the end of the assessment year. This time limit was three years for returns for 1968-69 and two years for returns for 1969-70 and thereafter.

With the enactment Act of Finance Act 1970 (Section 4A) persons in charge of charitable or religious trusts are under obligation to file returns. There was a proposal to modify this section w.e.f. 1-4-1989 but this proposal was abortive. Income of voluntary contributors is treated as income of charitable institutions.

There is an obligation on executive officer of political party to give a return (section 413)

5.7.2 Time limit for submitting a return

Position could be better studied under two points of period viz.

a) position prior to A.Y. 1989-90
b) position after A.Y. 1989-90

a) position prior to A.Y. 1989-90

The rule in generality is 30th June is a basic for the preparation of their returns. But, in case of assesses who are in receipt of income from business or profession a longer period of not less than four months (upto A.Y. 1971-72 it was six months) was granted in order to enable them to get their accounts audited and their balance sheet and profit and loss Account prepared according to the provision of the law in force for the assessment year. This longer period of not less than four months was calculated naturally from the end of the relevant assessment year of the business or profession. If there be more than one business or profession carried on by the assessee having different accounting years, then the end of that accounting year which expired last before the commencement of the assessment year was taken for calculating the minimum four months period.

(b) Position from A.Y. 1989-90.

Sub section (1) of sec. 139 was substituted by the Direct Tax Laws (Amendment) Act 1987 w.e.f. 1 April, 1989. It provides specific dates for filing the returns of different classes of assessee which are as under.

(a) Where the assessee is a company by 31st December.

(b) Where the assessee is a person other than the company,

i> Where the accounts of the assessee are required to be audited under the Income Tax Act or any other law by 31st October.

ii> In the case of a partner of a firm when the accounts of the firm are required to be so audited by 31st Oct.

iii> Where the report of the accountant is required to be furnished under section 80 HHC or section 80HHD by 31st October.

iv> In the case of cooperative society by 31st October.
Who drives income under business profession, but does not fall under item (1) above by 31st August.

vi> In any other case by 30th June.

The dates for filing the returns of income are now mandatory and cannot be extended. Prior to 1971-72 the officer had a discretion to extend time upto a particular time without charging interest and thereafter subject to charging interest from assessment year 1971-72 even where he, in his discretion, extended time for for filing of his return by an assessee he was to charge interest for delay in filing the return beyond the 30th June or four months from the end of the previous year as the case may be. Subject to this provision regarding interest there was no limitation regarding date upto which the time could be extended or that it could not be extended beyond the assessment year.

Under the 1961 Act the provision of voluntary return (as provided in section 139(1) provided for return of income by assessee suo moto. But subsection 2 of 139 provided for return on notice from Assessing officer. But w.e.f. 1st April 1989 individual notice has been dispensed with from 1989 in order to enforce, voluntary compliance on the part of the assessees sub section 2 was omitted. The effect of this is that an ex parte assessment under section 144 can now be completed for the assessee's default in filing his return voluntarily under section 139(1).

Prior to 1952 a return under sub section (1) could only be a return of income. It was futile for a person not liable to tax to rush in with a return, but such return could not in law, said to be a mere scrap of paper. It was also a return, such as the assessee considers, represents his true income. Undoubtedly section 139(1) enjoys that only those persons having income above exemptibility limit (for the time being in force) are only required to file a return but the principle equally applies to return of loss. For profit may be plus profit or it may be minus profit as well. But even a person returning loss (minus profit) though not compellable in the strict legal sense of the section to file a return may so opt to do to be on safer side to claim exceptions and deductions. In nutshell therefore since 1952 a return of loss is also within the purview of legal returns.

If a person does not file a return suo moto or on receipt of a notice he may file a return before the assessment is made. On the discovery of omission or wrong statement in the earlier return filed by him an assessee can safely by file a revised return without recourse to the assessing officer any way. There is however a distinction between a revised return and a corrected return. Revised return is always based on omission or wrong statement in the original return. Where the assessee had neither omitted to mention some thing nor had made a wrong statement in the original return but had got his accounts rewritten by
changing the system from mercantile to cash after submitting the original return and thereafter filed a revised return. The A.O. was right in rejecting the revised return. So also a return filed pursuant to a notice under section 148 cannot be treated as a revised return.

Powers have been vested in the Board to call for information in the return of income. Particulars in the return could include certain details regarding the business or profession carried on by the assessee above or as a partner or member of association.

Circumstances in which return is to be filed are various and assessee may file many more returns than one. The crucial fact is that the return to be filed is that of the total income of the previous year relevant to the assessment year. Where an assessee had already furnished a return in response to notice from assessing officer he need not again file any return suo moto in the same year. This provision was inserted in the Act on recommendations of the law commission. w.e.f. 1 April, 1989 this provision stands omitted.

There was no provision for levy of interest for the delay in filing returns under the 1922 Act. The provision for interest came in from 24 Feb. 1963. Even thereafter, though the levy of interest was automatic, it could be reduced or waived. However with effect from 1-4-1989 the levy has become mandatory as the power of reduction or waiver was taken away. The provision of interest is now contained in section 234 A which takes effect on that date. Sub section continues in the statute but is applicable only upto A.Y 1988-89. For A/y 1989-90 and subsequent assessment years, mandatory interest at two percent per month is to be charged for late filing or non-filing of return inserted simultaneously.

Validity or otherwise of a return is of prime importance for an invalid return is non est in the eyes of law. No valid assessment can be based on such return. It is indeed difficult to decide whether a return was so defective to amount to an invalid return or the defects were minor irregularities which could be rectified. Moreover, there was no procedure to rectify the defective returns. Remedy was found out to resolve the problem in 1980. All returns filed on or after 1st September 1980 are remediable through the provision. Defective returns are defined and officers are empowered to prevail upon the assessee to rectify the defects within fifteen days or more as the officer might allow. In case of failure of rectification of defects by the assessee the return would be treated invalid.

But while allowing rectification of returns one will have to
consider whether the return as filed is so materially defective that it is rendered invalid altogether or whether it is curable. In coming to a conclusion in this connection provisions of section 292 B will have to be borne in mind. If the return be in substance and effect in conformity with or according to the intent of the Act it is only defective and could be cured. On the other hand basic infirmities touching the root or substance could not be cured.

W.E.F 1st April, 1986 a provision is inserted in the Act. The return of income which shows total income below the maximum amount not chargeable to tax is deemed as never to have been furnished, with certain exceptions. This provision created certain anomalies.

For example furnishing of evidence along with return of income is a necessary condition for claiming exemption or deduction from gross total income in a number of provisions of Income-tax Act. However if as result of such claims, the returned income falls below the taxable limit, the return becomes non est and such claims can not be verified by the assessing officer. This disturbed the continuity of assessment records in certain cases. This provision has therefore been omitted with retrospective effect from 1 April 1991.

5.7.3 Appraisal of Returns

As has been described above in the maiden attempt in Indian Income taxation filing of returns was compulsory. But subsequently in 1886 element of compulsion was removed. In the Act of 1922 a novel provision of issue of public notice in the press was introduced. This provision was ridiculous on the face of it. Because every person is expected to be in the know of the law of the land and hence expenses of public notice was an exercise in futility. The burden on exchequer was without any commensurate benefit for no person filed a return in response to the public notice. In 1961 Act therefore this force of public notices for return was done away with. This was a step in right direction. Moreover, a person was to file a return not only in connection with his personal income but for the income of others also. For example a person in a representative capacity shall file a return for the income of a person whom he represents. This avoided escape of taxation by non submission of returns by certain persons. In the 1961 Act eventually charitable institutions and political parties also were called upon to file returns. Thus the charitable institutions were held accountable in Income-tax. They had to file the return and prove the exemptions applicable to them. In the 1961 Act position as to interest for belated submission of returns has changed. Interest was raised from 6% to 9% and subsequently a provision of mandatory interest at 2% per month has been introduced and the power to reduce or waive the levy of interest was taken away from the Assessing officers. This
will motivate the assesses to submit the returns on or before the dates stipulated for them generally. It is found that the person in the upper bracket used to delay the submission of their returns and play other delaying tactics so that in the latter part of the year the Assessing officers should hurriedly do the assessment work and would not go into the details of their income statements. Provision of mandatory interest, it is hoped would provide a deterrent for delay in submission of returns. Omission of section 139(10) in 1991 would help do away with an anomaly that returns below maximum exemption limit could claim exemptions and deductions and come down below the exemptibility limit and thus render the returns non est. The 1991 omission would curb this position. After returns are received in the Deptt. the work of assessment sets in.

5.8.1 Assessment.

There is perhaps no field of state citizen relationship in which it is so necessary that justice should not only be done but should clearly appear to be done as in that of taxation. Even if taxes are imposed with meticulous regard to equity, the objective may be defeated unless the personnel entrusted with the duty of administering tax laws bring to bear on the discharge of their daily tasks the maximum amount of tact and patience consistent with efficiency. Assessment represents the first stage in the administration of Income-tax statute when the taxpayers come into direct contact with the Income-tax Department. On timely and just assessments depend good public relations, & collection of the tax. It is, therefore essential that standards of fairness and speed should be maintained while making assessments and the assessments made should be just and be completed without avoidable delay.

5.8.2 Assessment during the first phase (1860-1886):

During this early period there was complete absence of administrative machinery. In the opinion of Seligman in the absence of such machinery even the theoretically best of taxes may easily degenerate into an oppressive and an unequal levy. That was the reason why the British system combined the democracy of local institutions with the bureaucracy of central supervision. No such scheme was ever introduced in India. The Govt. had an All-India machinery ready at hand viz the regular administrative staff at the districts who had, among other tasks, also the collection of loan revenue.

They were now entrusted with the assessment and collection of income tax as well. Except where the presidency towns where special officers were appointed to administer the Act the assessors were generally deputy collectors of long standing. The provision of compulsory filing of returns had been dropped by 1869, so that the assessor had now to rely on their own judgment in making the assessments. They toured the districts and this was
considered sufficient to enable them to know the incomes of persons resident therein. They were assisted by no other machinery for there was nothing in the Indian procedure corresponding to the General or Additional commissioners of the English system. The collector, who was a nominal assessing head had his work carried out for him by the Deputy collector who in turn, was assisted by his subordinate revenue staff. The Tehsildar used to be collector of income-tax for the tehsil. The mamlatdars did not know any body personally he only sent for the village accountants and patels gave them the schedules which they filled in and sent back to the mamlatdars. These schedules were sent back by the mamlatdars to the collector. Mamlatdar had so much of other work that even if he desired he could hardly find any time to make enquiries. And on such basis the collector framed his assessments. The assessment therefore was largely arbitrary. The tax was in the nature of benevolence or aid and the collector was almost irresponsible estimator and fixed the quota which each man had to pay. To this arbitrariness was also added oppressiveness. The operation of the Act was in the hands of the subordinate and minor officials. They levied extra legal charges and raised the assessment of those who were not in their good books. These petty officials were corrupt and numerous cases were reported in which persons falsely assumed the title of Ameen or collector of Income – tax – travelled about the country taking bribes, on the pretense that they would arrange to have all persons who paid them exempted from the tax. It was even reported that there occurred cases of suicide " Which were attributed by the local authorities to excessive dislike of the income-tax or rather of the enquiries occasioned by the income tax.

The above narrative speaks for itself in the matter of assessment and assessment procedure. The whole work of income tax assessment being entrusted to the district revenue staff was the principal cause of trouble. Making the best of the bad bargain one could say that the one virtue with the then obtaining system could be local knowledge. But even the air of local knowledge was also a myth, no collector being kept for long incharge of the same district. The collector was the nominal pillar of the system major part of the work was done by Dy.Collector, mamlatdars and village accountants and patels. They were corrupt unjust and oppressive in their approach to work. Thus the whole assessment was arbitrary, unjust, atrocious and far from any ideal tentets of assessment of any tax. Income tax therefore in the initial phase had become immensely unpopular. The chief fault of government lay in failing to realize the importance of proper machinery. Not only they failed to provide a whole time and expert machinery, but they also entrusted its operation to the overworked land revenue staff who handled it clumsily, because they knew little about it.

5.8.3 Assessment during 1886-1916.

The method of deduction at source was employed in the case of
interest on securities, and salaries and pensions, so far as they were paid by Government and local authorities. There was no such compulsory deduction in the case of salaries by companies and private employers, but provision was made for arrangement, between the collector and the employer by which the tax could be deducted in return for a commission. The commission varied, being 4 percent of tax proceeds, if paid in a lumpsum 3% of tax proceeds if paid quarterly and 1 % of tax proceeds if paid monthly. In addition all employees had to notify to Government the number of persons in their employ, their salaries and their addresses. As regards companies, the principal officer had to submit a return of net profits, but was not liable to produce his accounts in support of the same. The visible and easily accessible sources of income were those which came under parts I,II, & III. Part IV included just those incomes - commercial, manufacturing and trading profits - which it was very difficult in the first place to locate and secondly to assess accurately. It was in the assessment of income under this schedule that the collector found his hardest task.

The collector could invite returns of income from all persons chargeable under part IV but was not authorised to enforce production.

As most of the companies had to submit compulsory returns of their profit though not liable to submit their accounts. As most of their companies had their principal place of business situated in big cities. they were assessed by special Income-tax officers of those place and consequently there was no much difficulty in assessing their incomes.

The part, which gave the greatest trouble so far as assessments were concerned, was the one which was the most productive. This was part IV. which consisted of other sources of income. This vague phrase included — Professional Incomes, Industrial and Commercial incomes, Income from house property Income from other unspecified sources, Doctors, lawyers, money lenders, merchants, house owners, industrialists - these formed the persons whose incomes the collector had to ascertain, and in this task he received no help from the assessees themselves.

No new machinery was created during this period also. District revenue staff was entrusted with the assessment work. They were preoccupied with their revenue work and assessing officer had neither the time nor the abilities to assess accurately the incomes of the assessees. His task was rendered more the difficult because assessees were illiterate and did not keep accounts on scientific basis. Nor was it safe to base assessment work on standard of living, as these were determined by the social status and traditions of the assessee and not by his income alone. The result was that the work was amateurish and
conducted on a rough and ready basis, the assessments were nothing more than the guesses on the part of the collector.

The revenue officials despite their meagre resources tried to follow a few devices in their assessment work:—

i> Assessment by Commissions

ii> Assessment by groups.

iii> Assessment by special officers.

Assessment by Commissions:

Under this method the collector issued commissions to certain selected persons authorizing them to go through the accounts of some of the assessees, mainly those with commercial or industrial income. Those selected persons were generally themselves in the trade and had a working knowledge of accounts. The assessment was based on the result of their enquiries.

The merit of this device was that the selected persons used to have working knowledge of accounts. But intrinsic in the very merit was hidden a demerit of this method. If these persons had the advantage of local knowledge and standing, they had also the disadvantage of having their sympathies in favour of the assessees and against the revenue. This system therefore could not prove a successful solution of the knotty problem of accurate assessment.

Assessment by Groups:

The concept of assessment by groups emanated from Lt. Colonel Young, the Dy. Commissioner of Sialkot, and was first tried in his district. It was therefore consequently known as the "Sialkot System".

In cities, assessees were divided into groups according to trades or professions; in rural tracts the groups were constituted by reference to localities instead of to traders and professions. The collector fixed the total assessment on every group, the collective assessments of individual assessees being the basis in each case; the general prosperity of a trade or of business and agriculture in a particular tract were also taken into account in such a determination of the total assessment.

Once the assessment was thus fixed the whole group of assessees was summoned. They could not alter the total figure but were permitted to exclude any old assessees or include any new ones. A small committee was then selected which apportioned the assessment between the members of the group. Objections were then invited, the whole group having collectively to decide whether to accept the objections in whole or in part. If any individual assessments were reduced, the special committee had to redistribute the amount thus reduced over the remaining tax payers in the group. After carefully considering the distribution of
liability made in this manner, the collector announced his assessments.

The scheme was certainly promising, as it did, to secure an ideal distribution of the assessment. On the advice of the financial commissioner, the Lieutenant Governor ordered its extensive adoption in the Punjab. It was tried in 15 districts, but did not meet with much success being finally given up as unworkable in the very district of its birth Sialkot.

The cause of failure of Sialkot experiment could thus be summarised.

In the first place the scheme was in no way superior in accuracy so far as total assessments were concerned. To find income of group was certainly not easier than to find out the income of its individual members; as a matter of fact, the former was supposed to be based on the latter. In the determination of the total assessment, then, the collector received no outside help. This assessments therefore, could not be accurate as he had neither the time nor the special ability needed for such a purpose. Secondly, the scheme did not prove a success even as regards distribution.

**Assessment by Special Officer:**

The third device adopted to bring about accuracy in assessment was the appointment of special officers with special establishments—including an accounts clerk—to revise the assessments in selected towns and cities. These persons were full time officers, engaged solely in income tax work. They carefully went through the assessments of the places assigned to them, examined accounts and supplemented their knowledge by searching enquiries into the personal circumstances of the assesses. From the results of their enquiry, the officers would then revise the assessments. This not only increased revenue but also made the tax more equitable, many persons who had been unjustly assessed being now excluded on more careful examinations.

The system ensured a generally reasonable basis for the assessment and in consequence, appreciably lessened the unpopularity of the tax. The use of full time and expert agency was thus found to have the beneficial results, and clearly foreshadowed the coming order. In addition to this inaccuracy, they were found definitely partial to the richer assesses. As a matter of fact the sialkot system failed on this very count. As
regards the ordinary agency, it was asking too much of a Tehsildar to expect him to assess rich men properly. He is inevitably afraid of the rich and influential, and also amenable to personal animosity or corruption. The tax therefore fell with much greater sharpness on the poorer section of the assesses.

Income tax thus became extremely unpopular. The assesses were generally men of little standing and no reputation. They were not well paid and consequently were not above bribery and their activities had the effect of making the already low taxable minimum go down to a still lower level. To make matters worse cases were not found wanting of pretenders going about the country, blackmailing the general public and extracting money by threats of assessment to income tax.

Assessment was thus arbitrary and unequal in incidence. Various devices had been tried by which it could be improved; but they had not proved very successful. The principal reason for this failure was again the absence of a full time and well paid administrative machinery.

5.8.4 Assessment after 1916 (Under 1922 Act):

So far as methods of assessment were concerned, firms and companies were treated in no way different from individuals. They had to submit returns of their income and could be called upon to produce their accounts failing compliances, they could also be taxed at an amount determined as fair by the taxing officer. The only difference in procedure is with regard to companies. The principal officer had to submit the return before the 15th of June every year and no special notice calling for the same was required to be sent to him. Assessment could be of two types viz. i> Direct Assessment 2> Presumptive assessment.

Direct Assessment:

This was the method of assessment which was employed in the majority of cases; because unlike his income from salaries and securities an individual's income from business which has always been the most important source, was known only to himself.

The procedure adopted for direct assessment was as under. The Income-tax officer sent notices to all individuals - who he thought were liable to the tax - asking for returns of their income in the prescribed form. Within a month of the receipt of the notice, persons to whom such notices were sent had to submit their returns - whether they were liable or not. If the officer thought that certain points in the return needed elucidation or required proof, he could call upon the assessee to present himself at his office and explain the return. He could also call for the accounts of the assessee summon witness and take evidence. If the return was accepted as correct assessment used to be based on
that return. In the absence of submission of return and accounts the officer could make best judgment assessment. Best judgment assessment did not employ rule of thumb for the rule of laws, the officer was expected to act in a judicial spirit and could make the assessment on available evidence.

ii> Presumptive Assessment:

Two factors contributed to what may be called presumptive assessment. In presumptive assessment the income is legally calculated on some fixed formula. The two contributing factors are in the first place the complexity of modern income and secondly the fact that especially in the case of non residents, the necessary records might be beyond the reach of Indian jurisdiction.

Under the scheme of presumptive assessment during the period 1916 onwards in the phase of 1922 Act following classes of income were assessed on a presumption basis.

(1) Income from house property:
Annual value, of the house property was that sum at which the house was reasonably expected to be let out from year to year.

(2) Life Insurance Companies, Indian:
In the case of those companies incorporated in British India which carried on life insurance, annuity or capital redemption business and profits of which were periodically determined by actuarial valuation it was provided that their income was to be treated to be the average annual net profits disclosed by the last preceding valuation. But if in arriving at such actuarial valuation, any deductions were made from the gross income that were not admissible under the Income-tax Act they were added to the net profits and then taxed.

3> Life Insurance companies, Non Resident:
In the absence of reliable data the income of Indian branches of non resident insurance companies - Life, fire, marine, accident, burglary fidelity guarantee etc. was deemed to be a proportion of the total profits of these companies corresponding to the proportion which their Indian premium bore to their total premium income.

4> Shipping Companies:
In the case of non residents which carried on shipping business in British India the provision of tax was thus: that before departure from any Indian port the master of the ship shall file a return of full amount received by way of freight charges. The Income-tax officer after ascertaining the accuracy of such return assessed the profits of the business at 5% of the receipts.

5> Mixed Incomes: In the case of incomes derived in part from
agriculture and in part from business, the income assessable to
the tax was the total income as diminished by the market value of
the agricultural produce. Market value was given a statutory
meaning. It was calculated according to the average price at
which the agricultural produce was sold during the year previous
to that of assessment. But where agricultural produce was not
sold in its raw state, the market value would be the aggregate of
expenses of cultivation, the land revenue and a reasonable rate of
profits. - as fixed by the Income tax officer on the scale of such
produce. In the case of income derived from the growth,
manufacture and sale of tea these rules did not apply and 40% of
the total income was deemed to be the profits of manufacture.

6> Incomes of non residents: -
Where the Income - tax officer was of opinion that the actual
amount of income accruing to non residents from their business
connection in British India was not ascertainable, he could assess
their profits at a reasonable percentage of turnover. Otherwise
he could assess it at an amount which bore the same proportion to
their total income as their Indian receipts bore to their total
receipts.

In all the aforesaid cases the amount of the individuals
income was not ascertainable and a statutory substitute was
provided by rules made under the Act.

After more than a period of six decades elapsed the
assessment was founded on certain principles. The hackneyed
methods of assessment in the prior experiments yielded place for
new ones and some foundation could be given to the very important
task of assessment which constitutes the backbone of Income tax
administration. For the first time in history of Income tax the
1922 Act contemplated direct assessment which was applicable to
"Income from business profession etc. which was very important
source of the Income-tax. And in situation (as dealt with
aforesaid) the presumptive assessment was resorted to In
situations where income could not be aptly ascertained or where
the accounts and business documents were beyond the reach of tax
officers presumptive assessment provided a useful device which was
by contemplation of law utilized in some cases of assessment.
This could be a step in forward march in itinerary of Indian
Income-tax.

5.8.5 Assessment under 1961 Act (& onwards)

The assessment work sets in with the filing of a return by
the assessee. After a return is filed by the assessee the
Assessing officer may make inquiries before assessment. Even
under the 1922 Act an Income tax officer could make inquiries and
could require the production of accounts and documents. The
I.T.O. under the 1922 Act could not require the production of any
accounts relating to a period of more than three years prior to
the previous year. Thus corresponding provision cognate with that embodied in the present Act was prevalent in 1922 Act also. But there raged furiously the controversy in law courts about a quarter of a century as to the scope of Income tax officers' operational orbit.

The question generally posed in this connection was "Whether the finding of fact arrived at by the Income tax officer is vitiated altogether if it is partly based on admissible material and confidential enquiries substance of which was never disclosed to the assessee". Relying on section 167 of Evidence Act the answer was in the negative. After insertion of sub section in section 142 of the Act this controversy has almost been settled. The law as it stands today is that in order to arrive at a correct estimate of an assessee's income, it is now open to an Income-tax officer to make independent and private enquiries, behind the back of the assessee. But assessee should be given an opportunity to meet the case of the department. For instance the Income-tax officer can summon any person and record his statement under section 131(1)(b) read with order XVI rule 14 C.P.C. but before such a statement is used against him, he will have to be given an opportunity to cross examine the deponent. The recent developments in this connection are:

The position upto 1975 was that where a return had not been filed a notice could be renewed only after a notice u/s 139(2) had been renewed on the assessee. The amendment provides that sub section may be renewed after the issue of the notice under sub section 139(2) without having to wait for the service of the notice on the assessee. The object of this change was to expedite the issue of notice calling for books of accounts etc., in cases in which returns have not been filed voluntarily.

Since 1987 more emphasis had been placed on voluntary compliance. There has been a change in sub section 1 of sec. 142 to omit reference to sub section 2 of section 139 and to provide that a notice under the said sub section can be issued even where the assessee has not filed the return of income voluntarily by the due date. The Amending Act 1987 has also provided that where a return has not been filed voluntarily before the end of the relevant assessment year, the Assessing officer can call for a return of income by issue of a notice. This provision thus enables the assessing officer to call for a return and is a substitute for the provisions of sections 139(2). However a return called for under section 142(1) only after the relevant assessment year has ended without the assessee having filed the return of incomes. These changes came into force w.e.f. 1st April, 1989.

Under the provision upto 1989 the assessing officer can
require any person to furnish a return of his income only after the end of the assessment year. This has given rise to problems because if the tax payers do not file their returns of income in time the Department has no powers to enforce compliance till the relevant assessment year is over. Hence a change has been brought to the effect that the return shall be filed before the end of the relevant assessment year.

The above narrative of the changes in preassessment enquiries makes it amply clear that with the lapse of time whatever changes are made in Income tax statute in this behalf has aimed at expeditiously settling the preassessment enquiries even the amendments in the statute were to the effect of removal barriers in the way of expeditious and voluntary compliance on the part of assessee and undeterred pre-assessment enquiries on the part of the Assessing officers.

**Methods of assessment:**

Assessment can be of following types:
1. Self assessment
2. Regular assessment
3. Best judgement assessment
4. Back assessment and Reassessment

**Self assessment:**

Self assessment was introduced in 1964. In the self assessment after the earning year runs out and the assessee files a return in the assessment year, he is asked to make good within thirty days the shortfall between the tax found due on the basis of return and the tax already paid in advance, pending the usual enquiry by the Income tax officer in regard to the assessment which may occupy a varying length of time. This tax is later adjusted against the final demand, after the final assessment procedure is over. Failure to self assess renders a person liable to penalty upto 50% of the tax found due. Small assessees, the tax from whom on the basis of return does not exceed Rs. 500 need make no self assessment. In 1971 recurring penalties, instead of in one single sum were provided for. But such penalties were expected to be sparingly used. "The amount of penalty is only the maximum that has been mentioned. The idea is in case where a man has assessed himself, he should remit the money along with the assessment.

Before 1976 the assessee was required to pay self assessment tax within thirty days of furnishing of the return but in 1975 the provision was amended. The amendment makes departure in two respects. In the first place the provision was made applicable to all cases where any tax was payable on the basis of return. Secondly the amount in question was made payable before the filing of return and the return was to be accompanied by proof of such
payment. There was a change in the penalty for non-payment of self-assessment tax. It was made 2% of the due for every month of default.

From 1987 it was made mandatory for a person to pay before furnishing the return, tax together with interest payable for delay in furnishing the return of any other default or delay in payment of tax. Proof of payment of such tax and interest was to be attached with the return. Where the assessee pays only the part of the amount due at the time of filing return such payment shall first be adjusted towards the interest payable and the balance if any shall be adjusted against the tax. Certain changes are also made in the provision in 1989 w.e.f. 1st April, 1989. W.e.f. 27 September 1991 returns furnished u/s 142(1) were also brought within the ambit of this provision.

Though the changes in provision of self-assessment over time ensure the expedient payment of tax along with interest before the return is filed. Yet however, it is not a very easy task for to choose the right forms of returns, make the calculations of tax and pay the amount due under appropriate challans so as to ensure that the amount paid gets credited to his account with the department. It is to be noted that every assessee has been given a PAN since 1st April 1976.

Upto 1970 provisional assessment was in existence. It was a fruitful source of revenue until the procedure for self-assessment was introduced. After the introduction of the procedure of provisional assessment fell into disuse and subsequently it was omitted. Before self-assessment was introduced in 1964 there existed a scheme of remission to the assessee. Remission of 1% of tax was given to all assessees who got their assessments settled early. The provision was introduced in 1963. This provision, had thus, an ephemeral existence of one year only. Upto now procedure prior to submission of return has been dealt with. After return is submitted assessment takes place such assessment may be called regular assessment.

Regular Assessment:

On assessee's submitting the return and if I.T.O. be satisfied with the return so submitted he may do the assessment work and decide upon the sum payable by him or refundable to him on the basis of such return. This provision is parallel to that contained in section 23 of the 1922 Act. The only change is the determination of loss is declared as much an assessment as the computation of positive figure of income, likewise, issue of refund is as much a process of assessment as the creation of demand. Hereafter it will be the duty of an Income tax officer to refund any excess tax found due to an assessee as a result of assessment without the latter applying for the refund under section 239.
If Income-tax officer be satisfied with the return he can straight off complete the assessment without requiring the presence of the assessee or the production by him of any evidence. Such assessments are possible where the assessee has only one source of income and that is also concretely ascertainable only from the particulars in the return. One can visualise the return of salary income. The particulars of salaries are to be communicated already by the employer to I.T.O. Hence there is no hesitation for such a straight off assessments in such situations. Trouble arises where the return is not acceptable to the Income-tax officer. Then the I.T.O. may utilise the requisite materials in arriving at a correct and fair estimate of assessee's income. The requisite materials may be:

1> Accounts produced by the assessee.
2> Evidence produced by the assessee in support of his return.
3> Evidence produced by the assessee on any specific point required by the Income-tax officer.
4> Statement of assets and liabilities outside the account books, furnished by the assessee u/s. (142 (I) and II)
5> Enquiries made and depositions obtained u/s 131.
6> Personal enquiries made and private information obtained by the officer u/s. 142(2).

Since 1971, provisional assessment has been abandoned. Before such abandonment of provisional assessment executive instructions had been issued to Income-tax officers to take assessee at their words to accept their returns and to frame regular assessments. Executive instructions, since 1971, have received statutory recognition. In framing regular assessment the Income-tax officer need no longer stick to the figure of returned income. He can vary the figure of returned income without giving an appointment to the assessee so long as the variance is necessitated by

i> an arithmetical error in the return or in the accompanying statement.
ii> incorrect claim in respect of statutory deductions.
iii> Failure to claim deductions admissible.
iv> Unabsorbed depreciation, development rebate, loss or prescribed percentage of profit of new industrial undertaking brought forward.

If any underassessment be subsequently discovered, the Income-tax officer need not start proceeding or proceedings in back assessment. He can forth with frame another assessment for the same year after giving the assessee an opportunity of being heard. No notice for reassessment can be issued without the previous approval of the Inspecting Assistant commissioner.

If there be an overassessment, the assessee can similarly give to the Income-tax officer a notice of reassessment, "Within
one month from the date of service of the notice of demand.

From assessment year 1980-81 requirements of making adjustments in any tax or interest found due and where refund is due, the onus of intimating it to the concerned assessee had been omitted. This has removed a major cause of inadequate success of the summary assessment scheme.

There has been a radical change since 1987 the main features of the new scheme are:

i) The requirement of passing assessment order in all cases, where returns of incomes are filed, has been dispensed with and the issue of an acknowledgment slip to the assessee will be the end of the matter, if he has correctly paid tax and interest due on the basis of the return.

ii) If on the basis of the return any amount is found due from the assessee it can be recovered; if any refund is found due to the assessee, it can be granted without passing an assessment order.

iii) Assessment order will be passed only in a very limited number of cases selected for scrutiny.

There are changes brought about in the provisions of assessment by the recent legislative measures. The 1989 D.T.L. Amendment Act provides for removal of difficulties because of changes in the assessment procedure. The 1990 finance Act provides for processing of revised returns under the new procedure assessment of & F.A. 1991 pertains to the extension of the period of limitation for the service of notice.

5.8.7 Best judgment assessment:

If the assessee does not file a return the Income tax officer may make an ex parte assessment. Such an ex parte assessment can be made:

1) If an assessee fails to file a return of income.
2) If he fails to produce accounts u/s 142(1) or
3) If he fails to produce evidence in support of his return.

The conditions are alternative and not cumulative. Failure in any of the three circumstances will warrant an ex-parte assessment. Best judgment assessment was prevalent in 1922 Act also.

Once it is decided to make best judgment assessment certain principles are to be followed by "A.O.". He must not act dishonestly or vindictively or capriciously because he must exercise the judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of
assessment, and for this purpose "he must, their Lordships think, be able to take into consideration of local knowledge and repute in regard to assessee's circumstances, and his own knowledge of previous returns by any assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate, and though there must of necessity be guesswork in the matter, it must be honest guesswork. In that sense, too, the assessment must be to some extent arbitrary."

There was some change in the best judgment assessment w.e.f. 1 April, 1976. The change contemplated the extension of the ambit of the BJA also to cases where there was a failure on the part of the assessment to comply with the direction regarding audit of accounts a provision regarding which had been inserted by the same Act.

One finds the following changes in the best judgment assessment since 1987.

i> A best judgment assessment can be completed on assessee's failure under section 139(1).

ii> A best judgment assessment can only be made only after giving the assessee an opportunity of being heard.

iii> Opportunity shall be given to the assessee calling upon him to show cause why the assessment should not be completed to the best of judgment. However, such opportunity shall not be necessary where a notice has already been issued to the assessee.

iv> Refund can not be now granted under BJA.

Much Water was has flowed since the P.C judgment in Laxminarayan Badridas case yet the guiding principles laid down therein have not lost their significance in the matter of BJA. Viewing strictly from legalistic point of view when the P.C judgment was delivered the provisions of 1922 Act had not recognised a distinct legal head for BJA. But it was contained in section 23 thereof. 1961 Act provides a distinct head BJA and sets apart for the scheme of assessment a separate section. Refinements as aforesaid in this section with lapse of time have only carved out the requisite legal outline for the scheme. However as the guiding principles in Laxminarayan Badridas enjoined the BJA must have a perfect blend of warranties of objectivities necessitated by the situation and judicious subjectivities of the officer when he applies his mind to a particular case. Scheme of BJA takes care that owing to malfeasance or misfeasance on the part of assessee his income should not remain unassessed. Despite this precaution at times there are chances to escape assessment. Law contemplates such situations and provides remedies therefor. Back assessment and reassessment could be way out, provisions of which are discussed below:
Back Assessment and Reassessment:
Back assessment connotes:

1> The assessment proceedings for a particular assessment year commenced for the first time after the expiry of the assessment year and:

2> Re-assessment proceedings for the assessment year the tax liability for which has not been covered by the existing assessment.

Barring the very exception of a reassessment within the current year itself, reassessment proceedings can only take place subsequent to the expiry of relevant assessment year. The expression "back assessment" is, therefore, chosen as a generic term descriptive of the procedure for assessment of an assessment year that is already past. Shortly stated, it is the process of going back to an assessment year already gone by. Cases of escapement of income can be classified into three classes:

i> Where there is escapement by reason of the omission on the part of the assessee to make a return and no notice is issued to him within the relevant assessment year.

ii> Where by reason of the failure on the part of the assessee to disclose fully and truly all material facts, there has been under assessment.

iii> Where inspite of no omission or on part of assessee some income some how escapes assessment or tax is short levied.

Income can escape assessment as a result of lack of vigilance of the Income-tax officer, or due to inadvertence, or negligence or the perfunctory performance of his duties without due care or caution.

In the Act of 1918 it was provided that if for any reason income chargeable had escaped assessment in any year or had been assessed at too low a rate, the collector could, at any time in the year next following, assess or reassess such income. In 1922 Act if any income had escaped assessment or had been assessed at too low a rate the I.T.O. could proceed to assess or reassess such income by serving the requisite notice "at any time within one year of the end of that year. The ground of reopening assessment was very wide. It was enough that I.T.O. had grounds for believing in good faith that the assessee's income had escaped assessment or had been assessed at too low a rate. No preliminary enquiry had to be held by the I.T.O. to arrive at such belief by convening the assessee and granting him a hearing.
Under the Income-tax Act 1939 the period of limitation for initiating proceedings was raised. It was realised that escapement of income may arise for reasons which may ranging from stupidity of the officer to cupidity of the assessee. In concealment cases the period available for reopening the assessment was raised from one year to eight years and in other cases to four years.

The language of section 34 was found ineffective and helped tax-dodger and caused considerable loss to revenue.

Consequently section 34 of the Act was recast in 1948. Distinction was made between the causes of escapement due to latches on the part of the assessee and other causes. For escapement due to latches on the part of assessee the I.T.O was empowered to reopen within eight years. For escapement due to other cases the I.T.O. could reopen the assessment within four years of the relevant assessment year if, in consequence of information in his possession he had reason to believe that income had escaped assessment. Time limit of eight years and four years did not apply to any reassessment made in pursuance of any order in appeal, revision or reference.

In 1956 time limit for issue of notices in concealment cases where the escapement of income was one lakh rupees or more was removed. All assessments u/s 34(1) (a) were to be completed without any time limit.

In the absence of a specific provision or a clear implication in the statute the 1956 amendment could not be availed of for reopening an assessment where the eight year period had already expired before 1st April, 1956. This led to the enactment of income tax Amendment Act 1959. It validated notices under section 34(1) (a) already issued after the expiry of eight years and authorised the issue of such notices in future without time limit. This was the state of affairs upto 1961.

5.8.6 Position in the 1961 Act & after:

The 1961 Act split up old section 34 into seven sections – 147 to 153. This redistribution and spread over did not indicate any legislative intention to depart from or materially alter the scheme that prevailed under the 1922 Act. The salient changes were:

(i) The previous sanction of the commissioner of Income-tax was no longer necessary where any assessment is reopened within four years from the end of the relevant assessment year.

(ii) Where the escapement of income in concealment cases, for any year was likely to be Rs. 50000 or more the notice could be issued beyond eight years with the previous sanction of central Board of
Revenue.

The time limits were not to operate where the notice u/s 148 is issued in consequence of or to give effect to any finding or direction contained in an order in appeal, reference or revision as previously. The provision to empower back assessment remained unamended till 1987.

In 1987 a change has been brought in this provision. Accordingly the two limits have been merged into a single new section, which provides that if the Assessing officer is of opinion that income chargeable to tax for any assessment year has escaped assessment, he can assess or reassess the same after recording in writing his reasons for doing so. The requirement in the old provisions of I.T.O. should have reason to believe etc has been dispensed with. Hitherto the principle that after reopening assessment any subsequent information that comes further can be considered by A.O. for inclusion in reassessment has been recognised in the statute since 1987.

The law, it is stated, has been simplified and rationalised since 1987. The procedure of assessment has certainly been changed. Now each and every return does not require any application of mind by the A.O. unless the case is picked up for scrutiny and a regular assessment is passed. In the changed context it was but necessary to rationalise the procedure and it could unhesitatingly be stated that the changes brought about by D.T.L. A. Act 1987 is a success so far as the new changed provision is commensurate with the requirement of the exigencies with new procedural changes of assessment.

Power to make assessment for a back year in cases of escapement is futile without a machinery for back assessment. As has been stated earlier in the 1922 Act the whole gamut of back assessment was covered only in one provision and this provision was split into sections 147 to 153 of the present Act. Section 147 of the Act empowers the back assessment whereas a machinery is in motion therefore u/s 148 of the 1961 Act. The I.T.O. has to record his reason for initiating back assessment proceedings and he has to issue a notice to the assessee calling upon him to make a return of his income for that year. This return shall be analogous to one as contemplated in section 139(2) for the current assessment year. Any irregularity in the drawing up of the notice does not affect the validity of the notice so long as the assessee clearly understands the year for which and status in which he has to file the return.

Time limit:

Four time limits are set for issue of such notices:

i> Two years for persons treated as agent of non residents.

ii> Four years where the escapement of income is without any
omission or failure on the part of the assessee.

iii> Eight years where the escapement of income is by reason of the omission or failure on the part of the assessee.

iv> Sixteen years where the income has escaped assessment amounts to Rs. 50000 or more.

Since 1987 a line of difference is drawn between non scrutiny and scrutiny cases. Provision as to time limits since 1987 is based on entirely different basis. The time limits now depend on whether the case is a scrutiny case or a non scrutiny case and also the amount of income which has escaped assessment. The income limits for opening or reopening non scrutiny cases are lower than those for reopening a scrutiny cases.

The time limits in pre 1987 has been more or less on lines with those described above. Post 1987 time limits are based on distinctions of scrutiny and non scrutiny cases and the quantum of amounts of assessments. The post 1989-90 position is as follows:-

In case of scrutiny cases:

i> Four years from the assessment year unless the case falls in (ii) or (iii) below.

ii> Where the income chargeable to tax that escaped assessments amounts to Rs. 50000 or more the notice may be issued even if four years elapsed but not more than seven years from the end of the relevant assessment year.

iii> Where the income chargeable to tax that escaped assessment amounts Rs. 100000 or more the notice may be issued even if seven years elapsed but not more than ten years from the end of the relevant assessment year.

In case of non scrutiny cases:

i> If four years have elapsed from the end of the relevant assessment year unless the case falls in (ii) or (iii) below.

ii> Where income chargeable that escaped assessment amounts to Rs. 25000 or more the notice may be issued even if four years have elapsed but not more than seven years from the end of the relevant assessment year.

iii> Where the income chargeable to tax which escaped assessment amounts to Rs. 50000 or more the notice may be issued even if seven years elapsed but not ten years from the end of the relevant assessment year.

However these time limits shall not be applicable for making assessment, reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order.
passed in any proceeding under appeal reference or revision.

Time limits for back assessments were less in pre 1961 Act and they have been increased income in the 1961 Act. They have been again reduced in post 1987 period. Increase or decrease in time for opening back assessments can not be a subject of whim it must have some rationale viewing from early period as under 1918 and 1922 Act & further enactments till 1961 and later developments one finds this rationale. Before the Second World War commerce and industry did not develop as much as in the post second World War and especially post independence period, launching off Five year plans gave a fillip to industry and trade. There was more and more temptation for tax avoidance and evasion. The time limit to back assess was consequently increased from time to time as the ingenuity of the tax collector to detect lagged behind the ingenuity of the tax payer to conceal. But this time limit to back assess was reduced after the 1987 period. During this period there is no evidence to show that there has been, by any stretch of imagination any decrease in the tendency of tax avoidance and evasion. On the other hand tax avoidance is rampant of late. But there is reduction of period from 16 years to 10 years. Is it because of the adherence to the dictum. "Retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by the flux of time? One can hardly agree to the proposition that the reduction in the period of back assessing escaped incomes could be in consonance with the above jurisprudential doctrine. Though in general jurisprudence the spirit of the above doctrine could be acquiesced but in tax jurisprudence can not go with the spirit of statute be not allowed to affect, alter destroy etc. the right established with the efflux of time. If that be permissible it would be tax evader's havens. By any stretch of imagination therefore the above principle can not be a foundation of reduction of period to back assess the escaped income. After 1987 there ushered in an era of quick disposal of cases and therefore even in case of back assessment also expediency rather than any high sounding doctrinal ground could be a basis for reduction of period to back assess the escaped income. If this be the rationale behind reduction of period in past 1987 period that is just in keeping with spirit of times when procedure for regular assessment is also cut short.

Upto now the concept, administrative machine and time limit for initiating back assessment has been dealt with. Now it is proposed to discuss in brief the sanction for issue of notice for back assessment. Under the old provision of section 151 the sanctioning authorities for opening or reopening of past cases were prescribed depending upon the period after which action was being taken. Thus, if notice u/s 148 was to be issued after the expiry of four years from the end of the assessment year the sanction of the commissioner was necessary while after the expiry
of eight years from end of the assessment year the sanction of the Board was necessary. Now since 1987 the issuing by sanctioning authorities will depend upon whether the case is a scrutiny case or a non scrutiny case, and also the period after which the case is being opened or reopened. Thus, scrutiny assessment will not be reopened by an officer of the rank below the rank of Assistant Commissioner. After the expiry of four years from the end of the relevant assessment year scrutiny assessment can be reopened only with the approval of the Chief Commissioner or Commissioner. A non scrutiny case can be opened or reopened by any assessing officer and after the expiry of four years from the end of the relevant assessment year it can be opened or reopened with the approval of the Deputy Commissioner. However, where the Assessing officer is the Deputy Commissioner himself no sanction of the higher authority will be necessary for opening or reopening of a non scrutiny case.

Sanctioning authorities at present are the Deputy Commissioner or the commissioner in place of commissioner and the Board upto 31 March 1989.

The last but not the least is the question of time limit for completion of assessment or reassessment. In generality under 1922 Act period of completion of assessment or reassessment was four years from the end of the year in which the income, profits or gains were first assessable.

Where a notice had been issued within the time therein limited the assessment or reassessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if at the time of the assessment or reassessment the four years aforesaid have already elapsed. Under the 1961 Act, time limit for completion of assessments and reassessments was (i) the expiry of four years from the end of the assessment year in which the income was first assessable, ii) the expiry of eight years from the end of the assessment year in which the income first assessable. & iii) The expiry of one year from the date of filing of a return or revised return u/subsection 4 or subsection 5 of section 139 which is the latest. In 1968 there was a change as follows :-

(i) Four years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or before the 1st day of April 1967.

(ii) Three years from the end of the assessment year in which the first assessable, where such assessment year commencing on 1st day of April 1968

(iii) Two years from the end of the assessment year in which the income was first assessable where such assessment is the assessment year commencing on or after 1st day of April 1968.
In 1970 provision relating to time limits for completion of assessments and reassessments has been changed. So as to provide a time limit for completion of fresh assessments to be made in cases where (i) the original assessment has been cancelled by the Income-tax officer on an application by the assessee (u/s 146) or (ii) the original assessment is set aside or cancelled in appeal by the Appellate Assistant Commissioner (now Deputy Commissioner Appeals) or the Appellate Tribunal or in the revision by Commissioner. The fresh assessment in cases in (i) may be made at any time before the expiry of two years from the end of the financial year in which the original assessment was cancelled by the Income-tax officer (now assessing officer). In cases mentioned at (ii) the fresh assessment may be made at any time before the expiry of two years from the end of the financial year in which the order of the Appellate Assistant Commissioner (now, Dy. Commissioner Appeals) or Appellate Tribunal is revived by the commissioner. The time limit introduced with the changed provision in the 1970 Act shall be operative subsequent to 1971-72 assessment year.

Before 1987 the general time limit for completion of an assessment was two years from the end of the assessment year in which the income was first assessable. But since 1987 the period was cut short and no order of assessment could be made after the expiry of two years from the end of the assessment year in which the income was first assessable. This period has been cut still shorter to one year. The period of four years for completion of assessment, reassessment or recomputation has been cut short to two years.

The cutting short of the period aims at facilitating the quicker assessments and avoid certain bottlenecks. No specific time limit is specified for non resident.

Human beings are corrigeble. If there are any mistakes, opportunities should be available to rectify. 1922 Act contained provisions to this end and the 1961 Act also provided for rectification of the mistakes. The subsequent amendments were made in the provision so as to be commensurate with the changed nomenclature after 1975 Taxation Laws (Amendment) Act. A comparison of the 1922 Act and 1961 Act has been briefly brought out below :-

1> Under 1922 Act the power of amendment to an assessment was restricted to an assessment or refund order. The provision in the 1961 Act is wider and extends to any order passed by the authority and any intimation sent by it.

2> Under 1922 Act the commissioner could rectify an order passed by him in revision. The provision under present Act enables him to amend an order.
3) Under the present Act the commissioner or Deputy Commissioner can rectify a mistake brought to his notice by the assessee or Assessing officer.

4) Under the present Act Assessee should be given reasonable opportunity of being heard before making an assessment which has the effect of increasing the liability of the assessee in any manner.

5) Under the present Act any order of amendment has to be in writing, as a right of appeal is provided against the order.

All the procedural changes discussed above aimed at avoiding bottlenecks of procedure. Especially after 1987 the change in outlook has been in the interest of quick disposal of assessments. But in this endeavour the law appears to go away from its basic premise of simplifying the Income tax procedures. The present Act 1961 itself was enacted with a view to making the statute easy, simple and procedures straight. From this standpoint certain schemes of assessment were undertaken. Certain schemes are briefly discussed below:

5.8.7 Certain Schemes overviewed:

Certain schemes viz. PAYE (Pay as you earn), SAS (Summary Assessment Scheme) and FRGYA. (File the return and get your Assessment) are briefly overviewed below:

1) PAYE: This scheme viz. pay as you earn which is in operation presupposes that the tax payer can not only compute his taxable income but he can also calculate correctly the tax which is due. The scheme may undoubtedly go a long way in doing away with the problem of tax arrears but the foundation of this scheme is far from realities.

For companies and big business men there is no problem to compute taxable income and amount of tax correctly. They may hire services of the expert professionals for this purpose. But for a large number of salaried individual assessee to acquire such knowledge is by no means easy. It is therefore necessary that the form of return should be made as simple as possible and should be so devised that the taxpayers attention is drawn to all relevant points.

With simplification of forms of return it is desirable that a booklet be prepared in simple and non legalistic language containing important provisions of the Income-tax Act, and it be translated into regional languages and should be made available at nominal prices. It is understood, of date such a booklet has been brought into current practice.

2) S.I.C.S: (Small Income Cases scheme):

In the seventies the problem of arrears of assessments had
assumed serious proportions. Union Government adopted number of steps to expedite the speed of disposal of assessments. Small Income cases scheme was introduced in 1964 and since then it has been liberalised. Under the scheme small income cases, i.e., non company cases involving business income up to Rs. 10000 (Rs. 15000 for the cities of Calcutta and Bombay) all Government salary cases and all non-government salary cases with income below Rs. 18000— with certain exceptions are disposed of on the basis of statement of accounts accompanying the return, after making obvious adjustments of the inadmissible items of expenditure. This scheme was responsible for spurt in disposals during the period about 1967. To expedite assessments, provisions have been made since 1967-68 for facilitating distribution and allocation of work among Income-tax officers on "functional basis" on the American pattern. Under this scheme concurrent jurisdiction is given to two or more Income-tax officers in respect of the same area and assesses. Where two or more assesses have concurrent jurisdiction, specified functions are allocated to particular officers and each one of the officers performs such functions in relation to the case or cases within his jurisdiction. In 1968-69 this scheme was extended to 82 ranges. It has been subsequently extended. Legislative measures have been taken to reduce the period of completion of assessments.

With increase of income tax payers without consequent increase in the strength of staff the arrears of assessment piled up and quick disposal was necessary. The number of income tax payers which was 826092 on March 1951 increased to 11,16,713 on March 1961 and more rapidly to 30,12,570 on March 1971. Obviously the strength of assessing staff did not increase commensurately. Consequently the arrears of assessments during the period of 16 years increased from 5,28,070 on March 31, 1951 to 23,46,531 on March 31, 1967. Perturbed by mounting magnitude of assessment arrears the C.B.D.T. issued a circular on October 7, 1967 specifying the priority categories for assessment and adjustments. This scheme designed to be a temporary measure, helped in clearing off the bulk of the small income arrear cases.

S.A.S. (Summary Assessment Scheme was given a statutory basis by the Taxation Laws (Amendment) Act 1970, which amended section 143 of the Income tax Act to enable the Income-tax officer to make adjustments the returned income so as to inter alia, allow/disallow any claims, etc which on the basis of the return and accompanying documents was prima facie admissible / in admissible. The assessments under the summary assessments scheme are completed under section 143(1) of the I.T.Act 1961 and the I.T.O. may make an assessment of the total income on the basis of return itself, without requiring the presence of assessee or the production of any evidence in support of the return. This scheme came into operation from April 1, 1971. The main objective of the scheme had been to minimise the incovenience to the assessees and
expedite the disposal of cases.

The Central Board of Direct Taxes (C.B.D.T.) prescribed from time to time the monetary limits to decide whether a particular case would fall under the summary assessment or not, the idea being that the income returned in the year of assessment should be below the limit and the income assessed in the earlier two three years is also below that limit. Initially the monetary limit prescribed was Rs. 25000 for all charges except Bombay and Calcutta where the limit was Rs. 50000. A uniform limit was fixed in all charges in July 1977 the limit being Rs. 75000 in the case of registered firms and Rs. 50000 in all other cases. The limit has been raised to 1 lakh uniformly in all cases in 1980-81.

The Finance (no. 2) Act 1980 has also deleted sub clauses II & III of section 143(1) (b) w.e.f. April 1, 1980 empowering the I.T.Q's to dispose of assessment under the scheme without spending any time on checking whether the statutory adjustments permitted earlier by these two sub clauses are necessary in the first place, and carrying them out thereafter. This change has been effected because, in the eyes of the Government, "considerable time is taken in determining the requirement of making adjustments to the income or loss declared in return and thereby completion of the assessment is unduly delayed.

This does not mean that no cases upto the prescribed monetary limit are scrutinized. The C.B.D.T. prescribed administratively the class of cases for which the summary Assessment Scheme does not apply. Such exceptions include new cases, search cases, most of the company cases, tax evasion cases etc. Further selective scrutiny of cases completed under the scheme is also done on random sampling basis. Out of the total assessments completed, 2% of the cases having income upto Rs. 25000, 10% of the cases having income between Rs. 25000 and Rs. 50000 and 20% of the cases having assessed income above Rs. 50000 are selected from scrutiny.

5.8.8 Criticism of the scheme:

On the face of it S.A.S. appears to be optimal device for quick disposal of cases. But a deeper probe into it brings out to the surface its inherent defects. Its working has not been satisfactory and it has aggravated rather than solved the problems. Some of its demerits are enumerated below :

i> Anatomical inconsistency: The scheme, it is said, is based on American pattern. But it is not the exact replica of the American model. It retains some features of the assessment based on the British model. Consequently, defacto a hybrid system has been evolved (as it has been done in most other cases) with the result that it has disadvantages of both the systems and advantages of neither. In U.S.A. the tax payer has complete
freedom and undertakes full responsibility for his returns. The U.S. administration also carries out a monitoring function by computerization of all returns, imposition of severe penalties for failure to file returns. Moreover, a comprehensive system of reporting of all items of tax significance exists in the U.S.A. and all reported items are coordinated with the individual returns through the computer. In India the system of comprehensive reporting is nearly absent. This enables the taxpayers to suppress several items of receipts or understate incomes and makes the task of assessment more difficult. Further, the American system runs on social security numbers. In India similar attempt has been made through the allotment of PAN (Permanent Account Number) but its coverage is limited and enforcement negligible. Of late PAN scheme is vigorously being implemented.

**ii> Basis of selection for S.A.S.:** In India, the basis of selection whether a case would fall under the summary assessment scheme or not has been income returned/assessed. The segregation of summary from scrutiny cases based on income criterion suffers from the basic fallacy that there are dishonest tax payers in the higher income brackets and the potential revenue loss will always be small in smaller cases. The selection of cases according to income criterion is also indicative of the negative approach that every one is a tax evader and, therefore, why not retrieve the revenue which is being lost in bigger cases. The income criterion is also indicative of higher degree of trust in smaller assesses. In fact, the selection of cases between 'scrutiny' and 'summary' should be made on the basis of the character of the individual or the experience of the department in dealing with him and not on the basis of 'income'.

**iii> Saving of time a misnomer:** The idea behind the introduction of the scheme was that ITOs should not waste their time on petty cases and it is probably with this idea that the requirement of making adjustment in respect of the deduction, allowance or relief which, although admissible, is not claimed or having been claimed is, in fact, not admissible, has been omitted. Whether a case be summary case or a scrutiny case it has got to be decided by applying some one's mind. It does call for some work. Moreover, a taxpayer is permitted to file application within one month if the case has been completed under the S.A.S. and if he be not satisfied with the assessment the I.T.O. is under an obligation to reopen the assessment. If this happens it also consumes his time. Moreover, even where a case is completed under S.A.S. preparation of assessment forms and tax collection sheets, etc also require considerable time. Government made amendment in 1980. One can easily infer therefrom that the Government is interested in the number of assessments and not in the quality of assessment. An honest tax administration necessitates that not only the assessment is made but it should be correctly made and also appear to be honestly made.
Pendency on increase:—The prime objective of the scheme as initially initiated was to reduce pendency of assessments significantly. It is probably with this end in view that the initial monetary limit of Rs. 25000 under this scheme has been progressively increased to Rs. 1 Lakh, uniformly in all cases. In fact, the total pendency of income-tax assessments, as also the pendency of assessments under the scheme has gone up. The position of pending cases in eighties is depicted in Table below:

<table>
<thead>
<tr>
<th>As on</th>
<th>Total No. of assessments pending</th>
<th>No. of Assessments pending under the S.A.S.</th>
<th>3 as %</th>
<th>% of 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.3.1972</td>
<td>11,23,705</td>
<td>4,41,141</td>
<td>39.0</td>
<td></td>
</tr>
<tr>
<td>31.3.1973</td>
<td>13,92,665</td>
<td>6,38,866</td>
<td>46.0</td>
<td></td>
</tr>
<tr>
<td>31.3.1974</td>
<td>17,19,597</td>
<td>9,02,281</td>
<td>52.0</td>
<td></td>
</tr>
<tr>
<td>31.3.1975</td>
<td>16,77,481</td>
<td>6,48,541</td>
<td>39.0</td>
<td></td>
</tr>
<tr>
<td>31.3.1976</td>
<td>17,26,683</td>
<td>4,95,675</td>
<td>29.9</td>
<td></td>
</tr>
<tr>
<td>31.3.1977</td>
<td>17,41,638</td>
<td>6,15,714</td>
<td>35.0</td>
<td></td>
</tr>
<tr>
<td>31.3.1978</td>
<td>15,37,542</td>
<td>6,62,407</td>
<td>43.0</td>
<td></td>
</tr>
<tr>
<td>31.3.1979</td>
<td>19,25,564</td>
<td>10,16,031</td>
<td>53.0</td>
<td></td>
</tr>
<tr>
<td>31.3.1980</td>
<td>22,94,265</td>
<td>12,71,965</td>
<td>55.0</td>
<td></td>
</tr>
</tbody>
</table>


As the above table shows that both in absolute terms and percentage pendency is on increase during eighties. The principal justification for the short fall in the disposal under the S.A.S. has been that under the Annual Action Plan for 1978-79, the Income tax officers were directed to complete assessment of effective cases only. However this argument appears to be fallacious in view of the fact that the total disposal of the scrutiny cases (cases not falling under S.A.S.) which was 10,55,886 in 1977-78 came down to 8,98,162 cases in 1978-79 and was only marginally higher at 9,27,776 in 1979-80. When the scheme was introduced it was expected all cases falling under S.A.S. would be disposed of and there should remain no pendency of assessments at the close of the year. But this has not come true. But one feels hardly inclined to blame the officials of the department.

Simple arithmetics of the work load shall bring home this fact that officials of the department are not to blame. This simple arithmetics is based on 1978-79 figures.

The total number of assessments for disposal during 1978-79
Actual number of I.T.O.s engaged on the work.

52,35,891 cases
2,747
Per year average disposal expected
(if no arrears of assessments are
to be there)

\[
\frac{5235891}{2747} = 1906 \text{ cases per annum.}
\]

Disposal of cases per month
\[
\frac{1906}{12} = 159 \text{ cases p.m.}
\]

If one assumes 24 working days a month (a reasonable assumption indeed!)

Average cases to be disposed off per day
\[
\frac{159}{24} = 7 \text{ cases a day approx.}
\]

Disposal of seven cases a day is indeed a difficult task to perform.

In nutshell, S.A.S. could not succeed in reducing the workload of I.T. officers.

V> Tax evasion & low morale of the I.T.O's: As time rolled on, the ITOs were given more and more powers but less initiative and independent judgment. Raising of the monetary limit under the S.A.S. from Rs. 25000 to 1 lakh without any valid reasons and administrative instructions from time to time not to inquire into small income cases have further sagged their morale. The chairman C.B.D.T admitted that sample scrutiny of cases selected from out of the S.A.S cases are not being scrutinized adequately and also expeditiously." This attitude encouraged the officers to accept all the figures submitted by the assessees and encourage a large number of assessees not to disclose their other incomes. A large number of salaried employees do not disclose their non salary incomes and the officers also turn a blind eye to inquire into the non salary income, despite, at times, their knowledge of the non salary income of the salary earners. This aggravated the problems of tax evasion. The estimated loss to the exchequer during the financial year 1979-80 was estimated to the tune of Rs. 300 crores.

The above narrative speaks for itself S.A.S. failed to achieve its purpose. It has, on the contrary, aggravated the problems. Correct disposal at any rate, should not be sacrificed for quick disposal. It seems Government does not rapidly increase the strength of the staff for fear of increase in cost of collection. Low tax costs resulting from administrative indifference are as much an indication of injury to the tax paying public as high costs resulting from inefficiency. It is therefore, necessary that the present strength of the assessing officers should be considerably increased with necessary complement of ministerial staff. This might increase the cost of collection in the short run, but in the long run such a step would ensure regular collection through timely and correct assessments,
broader tax base and detection of concealments. Such a step would also impart justice to the tax payers through quick appeals and refund applications. Misguided economy in this regard is not desirable. Stress should be laid on more effective and efficient administration no matter if it means higher money cost.

After the new Act of 1961 came into force and as the number of tax payers are increasing it is difficult to meet the administrative exigencies created by increase in the number of tax payers. Quick disposal at any cost has been the craving of the Department. In 1987 a new scheme has been introduced. The scheme in short is as follows:

4) **F.R.G.Y.A.** (File return and get your assessment):

With the number of assessees continuously increasing, there was an urgent need to reduce the department's work load by greater reliance on voluntary compliance by the assessees. In 1987, therefore, an entirely new scheme of assessment is introduced.

Main features of the new scheme:
In pre-1987 period a scheme existed under which return was accepted without requiring presence or production of accounts by the assessees. However by 1987 Amending Act has done away with this requirement and it only provides for proper recovery of tax or interest due from the assessee or issue of refund due to the assessee on the basis of return.

5.8.9 After return action:

After return has been filed following action shall be taken:

i> If any tax or interest is found due on the basis of the return, after adjustment of the prepaid taxes an intimation shall be sent to the assessee specifying the amount so payable and such intimation shall be deemed to be the notice of demand; and

ii> If any refund is due, it shall be granted to the assessee.

Thus, if the tax on the basis of returned income and interest, if any, due under various provisions of the Act has been correctly been paid so that no sum is found payable by refundable to the assessee, no further action on the return is necessary, unless of course, the case is picked up for scrutiny.

5.8.10 Adjustments to the income or loss declared in return:

Department enabled to make following adjustments to the returned income or loss for the purposes of computing the tax or interest payable by or refundable to the assessee:

i> Rectification of any arithmetical errors in the return or in the accompanying accounts or documents:
Allowance or disallowance of any loss carried forward, deduction, allowance or relief, which, on the basis of information available in such return or the accompanying accounts or documents, is prima facie admissible or inadmissible, as the case may be.

The prima facie adjustments can be made only on the basis of information available in the return or the accompanying accounts or documents and not on the basis of the past records of the assessee.

No time limit was introduced by 1987 Act for sending an intimation to the assessee in respect of any tax or interest found due from him on the basis of return. A number of representations were received from the taxpayers that the assessee would remain in suspense about the finality of their returns and the A.O. may act arbitrarily and make undue delay in intimating the assessee. In 1989 therefore time limit of two years was provided from the end of assessment year in which the income was first assessable.

The amending Act 1987 while dispensing with the necessity of passing assessment orders in all cases did not contain any deterrent provision against filing of incorrect returns to show lesser tax liabilities. Thus, the new scheme of assessment was susceptible of being abused at the hands of unscrupulous assesses. Such assesses might return lesser income by making obvious mistakes or by claiming obviously incorrect deductions and taking a chance that if they are detected by the Department, they would have to pay correct tax only. In 1989, to mitigate such tendency on the part of the assessee 20% additional tax has been provided for.

Levy of additional 20% tax shall not only serve as a deterrent but also shall go a long way to persuade all the taxpayers to fill their returns of income carefully to avoid mistakes. It is thus a sort of negligence tax on the assessee and compensates the department for the effort involved in detecting the obvious mistakes committed by the tax payers in their returns of income or loss.

But for the deterrent levy of additional tax of 20% the new scheme, one is afraid, is susceptible to the same demerits as are enumerated against the S.A.S. scheme.

5.9.1 Collection and Recovery of Tax:

There are two methods for recovery of tax: one, directly from the assessee and the other indirectly. Under each of these procedures there are several methods. It is open to the Assessing officer to adopt any of these methods, either singly or cumulatively so long as any tax remains unpaid. The adoption by the Assessing officer of one or more of them, whether directly or
indirectly, does not exclude the adoption of others. Direct collection could be made by issue of notice of demand by Advance tax, recovery under the second schedule. This schedule imports the entire gamut of execution proceedings under Order XXI of the code of civil procedure. There could be collection vis a vis money in the custody of a court through distraint and sale of movable property; Garnishee proceedings (i) Salaries ii) other sums, recovery through state government, under section 222 recovery of Indian Tax in Pakistan could be made vide process. This remedy ensures only so long as there are reciprocal agreements for the recovery of tax between India and Pakistan. The Central Government may institute a suit in any court in India for the recovery of the arrears of the tax due from the assessee. Set off of refunds also could be also a mode of recovery. Refund due to the assessee could be adjusted towards tax dues outstanding. Before such an adjustment is made due indication should be given to the assessee. Indirect Collection could be through deduction at source.

5.9.2 Deduction at source

Prior to 1922 Act deduction at tax was employed in the case of interest on securities and salaries and pensions so far as they were paid by the Govt. and local Authorities. There was no such compulsory deduction in the case of salaries paid by companies and private employers, but provision was made for arrangements between the collector and the employer by which the tax could be deducted in return for a commission.

Under the 1922 Act deductions were provided u/s 18(2) (2B) 58(H), 58S(2) and the provisions were mostly on lines with those u/s 192 of 1961 Act. Section 192 of the present Act departs from the old sections 18(2), (2A) and (2B) in two material particulars. It fixes on the trustees of a recognised provident fund or an approved superannuation fund, the responsibility to deduct tax at source when making payment from the fund to an employee in certain circumstances viz.

i> When making payment from a recognised provident fund to an employee who rendered less than five years service.

ii> When making payment from an approved superannuation fund

From 1965 deduction at source for super tax was omitted.

In 1987 a modification is made in the provisions for deduction at source. If a person receives salary from more than one employer deduction of tax may be made by any employer as the tax payer may choose from the aggregate salary of the employee who is in receipt of salary from more than one employer. The amending Act now enables a tax payer to furnish particulars of income other than salaries to him, employer who shall deduct out of the salary payment, the tax due on the total income subject to the condition that the total amount of tax deducted shall not be
less than the amount deductible from income from salaries only. The liability of the employer to deduct tax at source is absolute one and cannot be affected by any agreement inter parties whatsoever between employer and employee.

Any person liable to pay income chargeable under Income from securities shall be liable to deduct tax at source. In 1962, 1965 and in 1971 various securities have been exempted from scheme of TDS ostensibly for the reason that in these years there were exigential emergencies treated due to wars with China and Pakistan and Government was eager to raise funds to overcome the emergency created by wars. TDS of super tax was naturally omitted from the year 1965.

In order to facilitate investment by resident individuals in central and state Government securities a provision to the effect of not deducting tax at source was made in 1966 provided his investment in the securities did not exceed Rs. 25000, that he was not assessed to Income-tax and that his total income in the A/Y was below the taxable amount. In 1970 exemption from TDS was granted to 7 years National Savings Certificate (IV Issue), debentures issued by any cooperative society or any other institution authorized by central Government in this behalf and Deposits under any scheme framed by Central Government Central Government notified for this purpose (a) Post office (Time Deposit) and (b) Post office (Recurring Deposits). National Development Bonds were exempted from TDS in 1978. This was done with a view to avoiding hardship to industrial workers and other employers in the lower income brackets from deduction at source from the interest payable on these bonds and such interest was exempted from deduction of Income tax at source. It will not be necessary to deduct tax at source from any interest on debentures paid to an individual who is resident in India if these conditions are fulfilled

i> Debentures are issued by a company in which public are substantially interested.
ii> The debentures are listed in Stock Exchange in India.
iii> The interest is paid by the company by account payee cheque
iv> The amount of interest paid does not exceeds Rs. 1000.

Before 1989 tax has to be deducted at source by the person responsible for making any payment of interest on securities at the time of payment. In 1989 it was provided that tax will be deducted at source either at the time of credit to the account of the payee or at the time of payment thereof whichever is earlier. This served the end of avoidance and postponement of TDS by postponing payment of interest.

TDS on dividends:

Since 1959 difference between 'Interest on Securities' and
Dividend income came to an end so far as deduction at source is concerned. Since the disbursing officer of interest on securities is a government servant, a declaration to him that he is not taxable may be made by an assessee direct. But if exemption is claimed from deduction of tax at source from dividend-income a certificate from the Income-tax officer would be necessary.

Upto 1967 deduction of tax at source was applicable to income from interest on securities and dividend. But since 1967 the obligation to deduct at source was extended to payment of interest simpliciter.

Since 1972 tax is deducted at source from winnings from lotteries if the winnings exceeds Rs. 1000. From 1978 deduction of tax at source was made applicable to winnings from Horse race provided such winnings exceed Rs. 2500.

Since 1972 a provision for deduction at source is made in case of payment made to contractors at 2% of the payment of contract in certain cases after 31 May 1972. Similarly in case of a contractor not being an Individual or H.U.F. will have to deduct 1% of tax at source from the payment made to a resident sub contractor.

The scheme of TDS is wide enough to cover oral contracts of payments, and payments made after 31.5.72 for work done prior to that date. This scheme shall be applicable to all the contracts where the quantum of work exceeds Rs. 5000. In case where advance payments are made during the execution of a works contract and such payments are to be adjusted at the time of final settlement of accounts the tax is required to deducted at source at the time of advance payment also. However TDS shall not be applicable if:

i> Payments are made in relation to several contracts exceeding Rs. 5000/- but the consideration for any individual contract does not exceed Rs. 5000

ii> The requirement of TDS does not apply in relation to payments made to commission agents for arranging sales or to advertising agents rendering professional services.

iii> This provision shall not be applicable in relation to payments made for hiring of equipments, rental etc.

iv> It does not apply in relation to payments made to banks for discounting bills, collecting/receiving payments through cheques/drafts opening and negotiating credits etc.

TDS was made applicable to payment of insurance commission w.e.f. 1-4-1973. The scheme as introduced in 1973 is as follows:

i> The deduction will be made at the time of credit of insurance commission to the account of payee, or at the time of payment thereof in cash or by issue of cheque, or draft or by any
other mode, whichever is earlier.

ii> No tax will be deducted at source where the amount is credited or paid before 1 June 1973.

iii> Income-tax will be deductible from the amounts credited or paid after 31st May 1973 even if the relevant amount accrued on or before that date.

iv> The person responsible for making deduction of income under this provision is required to issue a certificate showing therein the amount of the insurance commission, tax deducted at source etc. in form No. 19 D.

If the amount paid does not exceed Rs.5000 no deduction of tax is required to be made.

The Choksi committee had recommended that this provision should be made applicable only where the payment to any person exceeds Rs. 1500. But this recommendation was not implemented in the original provision. Subsequently in 1987 this provision was inserted and the amount stipulated was Rs. 5000 instead of Rs. 1500.

In 1989 the provision of TDS was introduced for deduction of tax at source from the amounts paid to non resident non citizen sportsman. The person paying shall deduct tax at source from the amounts paid to non resident non citizen sportsman. The person paying shall deduct tax at source at 10%. The person responsible for paying any amount standing to the credit of the assessee under the National Savings Scheme in respect of which a deduction has been allowed together with interest accrued on such amount is withdrawn in whole or in part in any previous year, shall deduct income tax thereon at the rate of 20%. [Sec. 194 EE inserted by Finance Act 1991 w.e.f. 1.10.91.]

But if such payment does not exceed two thousand five hundred rupees no deduction of taxes shall be made.

The amount is allowed to be withdrawn to an assessee from his investments u/s 80 CCA. And the amount withdrawn is deemed to be his income of the year of withdrawal. There are likely to be cases where the fact of the withdrawal of the aforesaid amounts is not disclosed by the assessee in their income tax returns. Provision inserted by 1991 Finance Act shall go a long way in curbing such tax evasion attempts.

A person responsible for paying to any person any amount invested by the assessee in respect of Equity Linked Savings Scheme either by way of repurchase of such units or on the termination of the plan shall at the time of payment thereof, deduct income tax thereon at the rate of 20% . [Sec. 194 inserted by F.A.1990 w.e.f. 1/4/1991]

No special comment is required on the provision contained in
The provision of Section 194F is analogous to that of Section 194EE. These legislative measures seek to readily bring into tax net the amount which otherwise may be avoided in their returns by the assesses. It is in a way a preventive measure.

Any person responsible for making payment to a person who is a or has been stocking, distributing or purchasing or selling lottery tickets any income by way commission remuneration or by way of prize on or after 1st October 1991, if the amount exceeds one thousand rupees person paying such amount shall deduct tax at source at 10%.

The time limit for deduction at source shall be payment of income by way of cash, cheque or draft or at the time of credit of such income whichever is earlier.

At present TDS is applicable for payment for winnings in lotteries etc. But before 1.10.91 there was no provision for deduction of tax at source from payment to sellers of lottery tickets by way commission or prize from the winners of the lottery so there are chances of tax evasion here. To curb this tax evasion the provision introduced by Finance Act 1991 will be useful.

Income by way of commission and brokerage is, before 1991 not subject to deduction of tax at source. This is one source of income where the incidence of tax evasion is very high curbing such potential tax evasion was a desideratum. Finance (No. 2) Act 1991 plugged the hole. Under this provision the person responsible for paying any income by way of commission or brokerage for services rendered or for any services in the course of buying or selling of goods etc. shall deduct income-tax thereon at the rate of ten percent. However, no such deduction shall be made where the amount of payment or the aggregate amount of payments in a financial year does not exceed two thousand five hundred rupees. The new provision will not apply when payments are made by individual or Hindu Undivided families. "Commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of any other person for service rendered or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset valuable article or thing.

By "professional services" are meant those services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board under section 44 A.

Corresponding provision to that in sec.3(B) and 3(C) of the 1922 Act exists in the 1961 Act which provides TDS in case of
other sums. Any person responsible for paying to a non resident non corporate person or to a non Indian company or a company which did not enter into arrangements to declare divided in India any interest other than interest on securities any other sum other than dividend shall at the time of payment deduct tax from such payment at rates for the time being in force for TDS. This provision shall not apply to a payment made by an agent of non resident. In 1965 deduction for super tax was omitted.

The provision of deduction of tax created hardship. It necessitated deduction at source with reference to the income element embedded in payments made by a large number of consumers for goods or services provided by non resident concerns operating in India. With a view to avoiding such hardship and inconvenience in case a new provision was made under which any non resident, including a foreign company, may obtain from the I.T.O. a certificate authorising him to receive payments of income by way of interest or any other sum which is chargeable to tax in India without deduction of tax at source. Such application may be made in the case and under circumstances to be specified by C.B.D.T. in Income - Tax Rules. The rules will specify the conditions subject to which such a certificate may be granted by the Income tax officer and provided for other connected matters.

In 1975 long term capital gains in respect of foreign company was made amenable to TDS. This amount to be deducted was equal to amount of income-tax on such sum calculated according to provision of section (i) of section 115

An attempt is made to rationalise the provision pertaining to deduction at source from payment of "other sums" to non residents. For this purpose an Assessing officer is authorised to determine the income component of the payment to non residents by general or special order in any case which may arise, rather than giving a general power to determine the income in a prescribed manner.

1987 Finance Act amended sec 195 in a way to provide for deduction of tax at source on payment of certain sums to non residents either at the time of credit at the same to their account or at the time of payment of it in cash or by an issue of a cheque etc, whichever was earlier Prior to this amendment, the requirement to deduct tax at source was only at the time of payment in cash or by cheque etc. After the amendment had come into force w.e.f. 1st June 1987, a number of public sector Banks had represented that they would have to restructure the interest schedule and also the maturity period of the various deposit schemes relating to non resident accounts on account of the requirement to deduct tax at source at the time of credit of interest to such accounts. After considering the practical difficulties pointed out by these banks, it was decided to revert to the pre-amendment situation in respect of deduction of tax at source out of payment of interest to the accounts of non residents
by the Government or public sector banks or a public financial institution. Hence the TDS provision has been amended to provide that in the case of interest payable by the Government or public sector bank deduction of tax shall be made at the time of payment in cash or by the issue of a cheque or draft or by any other mode. In 1991 provision has been made whereby an assessee may apply to Assessing officer to determine the appropriate proportion of such sum chargeable to tax and in such cases tax is required to be deducted from the portion as determined by the Assessing officer in case of foreign companies.

Under the existing scheme of deduction of tax at source, even in case where a lower rate of income tax is provided in the tax treaty tax has to be deducted at the rate prescribed by law. As a result in many cases, the amount of tax deducted from sums remitted to foreign companies is larger than the final tax liability thus requiring filing of claims for refunds. With a view to correcting this position, it is proposed to make provisions to secure that the tax is deducted at source at the rate applicable in a particular case, for final tax liability.

This change will be effective from 1-10-1991. TDS & Payment to Government, R.B.I. etc.

No person shall deduct tax at source from payment made to Government, Reserve Bank of India in respect of any securities or shares owned by it or in which it has full beneficial interest. Such a provision was contained in section 18(10) of the 1922 Act. 1967 Finance Act extends the scope of exemption from TDS to corporations set up under a central Act. Further the provision has also been extended to cover interest receivable by the Government or R.B.I. or corporation. Amending Act 1987 extends this exemption to payments made to a mutual fund or from payments made by mutual fund. The Amending Act also inserts sec. 196A which interalia provides: that no tax shall be deducted at source by a public sector bank or public financial institution from any sums payable to the unit holders of its mutual fund. This provision shall come into force from 1st April 1988.

However if interest is payable to a foreign company tax shall be deducted at the rate of 25%.

Upto 1990 mutual funds are not required to deduct tax at source from payments by way of distribution of income on their units to persons other than foreign companies. In the case of U.T.I. the exemption from requirement of deducting tax at source applies only where the payments are to individuals Charitable institutions, trusts etc can obtain payments from U.T.I. without deduction of tax at source only by filing a statement in the prescribed form stating that their income is exempt.

The Unit Trust of India and some other mutual funds have,
during the last few years floated certain offshore funds with a view to attracting overseas institutional investment. These offshore funds compete with funds of other countries internationally. Of late provision has been made in order to facilitate easy collection of tax from the offshore fund. It provides for deduction of tax at source at the rate of 10% from any payment representing income on units held by offshore funds. The tax is to be deducted either at the time of payment or credit to the account of the payee whichever is earlier.

Certificate for deduction of lower rate:

In the case of any income of any person other than a company, the Assessing officer is satisfied that the total income of the recipient justifies the deduction of income tax at any lower rate or no deduction of income-tax as the case may be, the Assessing officer shall give to him such certificate as may be appropriate. Where such a certificate is given the person paying the income shall or shall not deduct tax as per terms of certificate so granted.

5.10.1 Advance tax:

The provision for advance tax was introduced in Indian income taxation for the first time in 1944. Until this amendment there was no provision for advance tax. A provision was made by enacting a new section in the 1922 Act for imposing a liability upon the tax payers who had been previously assessed and even upon those who had not been so assessed to make advance payment of tax in respect of income exceeding a certain amount. The provision in fact was introduced as a war time measure to combat inflation and withdraw some of the money in circulation; but like many other innovations in taxation legislation it outlived the exigency which necessitated it. The provision attempts to reconcile the principle of advance payment of tax with the scheme of the Act which is to tax the income of the previous year. The foundational premise of the principle is "Pay as you earn" i.e. paying tax installments in respect of the income of the very year in which the tax is paid. The income of the current year, i.e. the previous year for the next assessment year, was taken at an estimate equivalent to the latest assessment year, or as estimated by the assessee (where he expected it to be less) and the tax was collected during the course of the current year. The amount so collected was adjusted against the final demand when the regular assessment was made. In the initial stages, the amount paid was placed on par with a deposit carrying interest. But with effect from 1st April 1952 the position changed and it was treated as advance payment of tax, interest being payable on either side according as there was excess or shortfall discovered on final assessment. Also earlier, advance tax was voluntarily payable only by new assesses in the year in which their current income was likely to exceed a specified margin while persons assessed
earlier could wait for a notice of demand from the officer on the basis of earlier assessments. But this position has changed and after the insertion of section 209A all assesses whose income subject to advance tax exceeds certain limits are liable not only to send estimates and pay advance tax voluntarily but also to raise them from time to time so as to bring them up-to-date. This scheme has once again been changed by the introduction of a new scheme of payment of advance tax from 1st April 1988 under which assesses have themselves to pay advance tax in three installments on or before the specified dates.

A person having income subject to advance tax shall be liable for paying advance tax. Income other than capital gains is income subject to advance tax.

Position upto March 1988:

Under the 1922 Act, initially, advance tax was payable in respect of all income not subject to deduction at source. With effect from 1st April 1960 it was made payable in respect of all income other than salaries. Capital gains had always been excluded from the purview of advance tax in view of its occasional nature and with some other items of casual and non recurring receipts being treated as income under section 2(24)(ix) such item are still excluded from the purview of advance tax.

Capital gains are expressly excluded from imposition of liability to pay advance tax. Casual income in the nature of lotteries, crossword puzzles, races (including horse race) are exempt from liability of "advance tax". This is because in the very nature of things, the receipts can not be anticipated and are of non recurring nature.

Position from 1st April 1988:

Advance tax payable is a tax in relation to income and it is in no way different from income tax. It has, however been held that a sum demanded is not a tax which becomes due and payable particularly in the context of liquidation proceedings and, therefore the income-tax authorities are not entitled to preferential treatment with regard to them. A contrary view has also been expressed to the effect that in case of liquidation the state is entitled to priority in regard to demands of advance payment of tax.

Conditions of liability to pay advance tax.

Condition of liability to pay advance tax exists only where the income subject to advance tax goes beyond stipulated monetary limits. Originally in 1944 no advance tax was demanded where the income did not exceed Rs. 6000/- . This left, initially a margin of Rs. 4000/- above the minimum income chargeable to tax
which got reduced to Rs. 2400/- subsequently and also created a
certain anomaly in the case of Hindu Undivided families. In 1953,
therefore, a uniform margin of Rs. 2500/- over and above the
maximum net chargeable to tax. Now different limits have been laid
down. These exemption limits have been enhanced from time to time
in the case of various categories of assessee. At the time of
substitution by the Direct Tax Laws (Amendment Act) 1987 w.e.f. 1
April 1988 the liability to pay advance tax was attracted in the
case the income liable to advance tax exceeded the following
limits.

i) Rs.2500 in the case of a company or a local authority.

ii) Rs.20000 in case of a registered firm.

iii) Rs.12000 in case of an H.U.F. which has at least one
    member, whose income exceeds Rs.18000.

iv) Rs.18000 in any other case.

In cases (iii) and (iv) above if the advance tax did not
exceed Rs. 1500 the assessee was not required to any advance tax.

From 1st April 1988 :- The Tax Laws (Amendment) Act, 1987 has made
major changes in the provisins relating to the advance payment of
tax with a view to simplifying and rationalising these provisions.
One such step is the abolition of the above categories and the
income limits. The provision enjoins that advance tax shall be
payable during the financial year in every case, irrespective of
the status of the assessee, where the amount of such tax payable
by the assessee amounts to Rs.1500 or more. The amount of Rs. 1500
refers to the sum total of advance tax "payable by the
assessee"during that year and not to an installment of advance tax
payable on a particular date.

5.10.2 Computation of advance tax

Advace tax payable by an assessee in a financial year
shall be computed having regard to inter alia, his total income of
the latest previous year in respect of which he has been assessed
by way of regular assessment [sec. 209 of 1961 Act]. For the
purpose of computing the advance tax payable in a financial year
the starting point is the total income of the latest previous year
in respect of which a regular assessment has been made. The
subsequent computation proceeds on this basis. If the assessment
on that total income has been set aside, it is not open to the
Assessing officer to consider that total income for the purpose of
computing the amount of advance tax. As assessment which has been
set aside exists no longer it cannot, therefore, constitute any
basis for computing the advance tax.

Operative amount upto 31 March 1988

The starting point for the computation of the advance-
tax is the total income of the latest previous year in respect of
which the assessee has been assessed. However, this figure is to
be replaced by recent available figure of income. This can happen (i) when the assessee himself makes self assessment in respect of a later year and pays tax thereon or the Assessing Officer himself enhances his demand on the basis of such self assessment; (ii) where the assessee sends an estimate or revised estimate in respect of the financial year in question or (iii) when the assessee is a partner in the registered firm and an assessment of the firm has been completed for a year later. In these cases, the figure of total income, thus made available will form the basis of computation of advance tax under section 209 is the one estimated by the assessee. It supersedes the total income computed by the Assessing Officer either under clause (a) or as amended by clause (d) of section 209. This is so because the total income on which the advance tax is payable by an assessee is the one computed under clause (a) of section 209 however, makes the total income referred to in clause (a) subject to the total income estimated by the assessee under section 212. For instance if the assessee does not earn any income he is entitled to send a revised return stating therein that he is not liable to pay advance tax in any installment or installments as he has no income or taxable income. After such a revised estimate is filed by the assessee the Assessing Officer will have no jurisdiction to recover advance tax from the assessee.

Computation of advance tax from 1st April 1988

Section 209 A and section 212 were omitted w.e.f. 1st April 1988 and section 209 was also substantially amended. The provision after the amendment stands thus:

(i) Where the calculation is made by the assessee for paying the advance tax either of his own accord or on the basis of the estimate of his current income which may be filed after the assessee is saved with the notice by the Assessing Officer u/s 210(3) or for payment of advance tax, income tax on the current income shall be calculated at the rates in force in that financial year.

(ii) Where calculation is made by Assessing Officer for making an order under section 210(3) requiring the assessee to pay advance tax, he shall adopt the total income assessed by way of regular assessment of the latest previous year or the total income returned by the assessee for any subsequent previous year whichever is higher, and calculate income-tax thereon at the rates in force in that financial year.

(iii) Where calculation is made by the Assessing Officer for making an amending order under sec.210(4) on the basis of return filed or a regular assessment completely subsequently for previous year later than that adopted in an order under section 210(3), income-tax shall be calculated on the total income declared in such subsequent return or total income determined in such regular assessment, as the case may be, at the rates in force in that financial year.

(iv) The income-tax calculated under any of the above clauses
shall, in each case, be reduced by amount of income-tax which would be deductible or collectible at source under any provisions of the Act on any income which has been included in the current/total income determined under any of the above clauses.

There are following two special cases for rates of computation of advance-tax viz:-

(i) Where the assessee's income includes agricultural income liable to tax; and
(ii) Where the assessee is a Hindu Undivided family of which at least one member has chargeable income.

The assessee may pay advance tax of his own or on order of Assessing Officer. In such cases the provision as to such assessees is as follows:-

**Position upto 31st March 1988**

Assessing Officer may be required to pass on order requiring an assess to pay on order requiring an assess to pay advance-tax. The mere fact of the compulsion of payment of tax under section 210 cannot mean that by the operation of this section tax has been levied, assessed and collected. Assessment is the final process which completes the levy of tax. The assessing officer is, however, obliged to pass such an order where a person has been previously assessed by way of regular assessment. "The regular assessment" in context of sec 209 and 210, have been held to refer to the first assessment made by the Assessing Officer though it may have been subsequently set aside or varied. It has been held that sub section (1) of section 210 merely qualifies an assessee to whom a notice under this section can be issued. It does not lay down that an assessment must have been framed on the assessee for the last one or two or more years.

**Position : 1st April 1988 onwards**

Under the old section 210 the Assessing officer was empowered to pass an order requiring an assessee, who had been previously assessed by way of regular assessment, to pay advance tax. The Assessing officer was also empowered to issue a revised order for payment of advance tax, at any time upto fifteen days before the date on which the last installment of advance tax was payable, in case where, after the issue of original order, tax was paid by the assessee u/s 140 A or a regular assessment of the assessee was completed for a previous year on the basis of which the original order was issued. The new section deals with payment of advance tax by the assessee of his own accord or in pursuance of an order of the Assessing officer. The new section casts the responsibility of payment of advance tax on the assessee with out his having to submit statement/estimate of advance tax payable. Where, however, the Assessing officer sends an order for payment of advance tax to the assessee, the assessee may file an estimate
of his current income and pay tax accordingly. Advance tax is to be paid in installments. Provisions in this behalf are as follows.

The installments in which advance tax is paid is shown in Appendix I.

**Interest on advance tax**

If advance tax paid exceeds the amount of tax assessed central Govt. shall pay simple interest on excess paid at 15% from 1st April next following the said financial year to the date of regular assessment. Interest shall be payable only up to the date on which refund of excess was made.

**Interest payable by assessee in case of under estimate, etc.**

If any assessee underestimates the advance tax payable by him and thereby reduced the amount payable in either of the first two installments; or wrongly deferred the payment of advance-tax on a part of his income interest at 15% p.a. shall be payable.

The provision of present sec. 216 is verbatim reproduction of the same language with minor differences about references, etc as sec. 18A(7) of the 1922 act. Under that Act where I.T.O. found on making a regular assessment, that an assessee had underestimated the tax payable by him and thereby reduced the amount payable in any of the first three installments, or wrongly deferred the payment of tax on a part of his income, it was open to the I.T.O. to direct the assessee to pay simple interest at 6% p.a. for the period during which the payment was deferred on the differences between the amounts paid in each of such installments and the amount which should have been paid having regard to the correct tax paid during the year. The difference between the applicability of the provisions contained in sec. 216 of the present Act and these in sec. 18A(7) of the 1922 Act is that, though sec.212 of the 1961 Act speaks of the assessee having to send two estimates to the assessing officer, i.e. estimate of the current income and estimate of the advance tax payable by him, sec 216 speaks of under-estimation only as regards the advance tax payable by the assessee and provides for the consequences of under-estimation of the advance tax payable by the assessee.

**Interest payable by assessee when no estimate made**

A person who becomes an assessee for the first time and who, though, liable to pay advance tax under the act, fails to pay the same, as required under the Act, is liable to pay interest at the rate of 15% on the amount not paid. This rate was 4% at the commencement of 1961 Act, 6% by the Finance Act 1965, w.e.f. 1st April 1965; 9% by the Finance Act 1967 w.e.f. 1st Oct. 1967; 12%
by the Finance Act 1972 w.e.f. 1st April 1972; and 15% by the Taxation laws amendment Act 1984 w.e.f. 1 October 1984.

Since the provisions have been transposed to sections 244A, 234B and 234C provisions contained in sections 214 to 217 shall be inapplicable for A/Y 1989-90 and onwards.

Assessee deemed to be in default

It is clear from the aforesaid discussion that assessee is liable to pay advance tax in three installments. If he fails to pay any installment or installments he shall be deemed to be an assessee in default. The object and aim of this provision is to recover advance tax from an assessee. If advance tax can not be recovered before the completion of the assessment the provisions for levy of advance tax would be meaningless and nugatory. The statute is clear on this point that tax is recoverable before the completion of the assessment for financial year concerned.

Provisions upto 31st March 1988

The moment assessee fails to pay installments he is said to be in default yet he has an option to file an estimate before the last installment is due and to pay the advance tax in accordance with the estimate in equal installments on such dates as are applicable, as having expired or in any one before the last of such installments dates had not expired.

From 1 April 1988

Major changes have been made in the scheme of payment of advance tax w.e.f. 1 April 1988. With a view to simplifying and rationalising these provisions. Sections 209 A and 212 have been omitted consequent upon the transfer of some of the provisions to 209 and 210. Sections 207,208 and 211 have been substituted and section 214,215,216 and 217 have been rendered inoperative from assessment year 1989-90. The net effect of these changes is that the circumstances under which an assessee could be in default has also undergone a change.

5.10.3 Credit for Advance Tax

Credit is given to the assessee for any amount other than for interest and penalty paid by him or received from him as advance tax and credit is given in the regular assessment. Section 219 provides for granting of credit in respect of advance tax collected before the assessment is completed. Section 219 makes it abundantly clear that advance tax is recoverable before the completion of assessment for the financial year concerned and resolves all doubts as to the jurisdiction of the assessing officer to recover advance tax before the assessment is completed. If excess payment of advance tax is made he is also entitled to refund thereof with interest u/s/ 214 read with Sec. 219.
Assessing officer in India has been held bound to give credit to the unadjusted amount of advance tax paid in Pakistan before partition.

A proviso to the section was inserted to the Finance Act 1968, w.e.f. 1 April 1968 to provide that credit for advance tax paid by, or recovered from the taxpayer shall be given also in the provisional assessment made under section 141 A. This provision was omitted by the Direct Taxes Laws (Amendment) Act 1987 w.e.f. 1 April 1989, consequent upon the omission of section 141 A by the same act. This was pertaining to advance tax. In the pages to follow collection and recovery of tax is dealt with.

Collection and Recovery
Upto now deduction of tax and payment of advance tax have been dealt with. In situations other than those and under voluntary disclosure schemes the provisions applicable are dealt with as under.

When tax payable and when assessee deemed in default.
It is clear that before 1922 the collection work was done through the machinery of state Governments. The provisions of 1922 Act were contained in section 45 of that Act. Analogous provisions are to be found in section 220 of the present Act. This section deals with payment of tax within the stipulated time from that mentioned in the notice of demand. Assessee failing to pay within the stipulated time shall be treated assessee in default. Assessing officer in case of pendancy of an appeal, may, in his discretion, not treat such a person assessee in default.

Present Act vis a vis this provision departs from the old provision (i.e. Sec. 45 of 1922 Act) in the following material respects.)

i> Formerly the tax was payable "on or before the first day of the second month following the date of the date of the service of the notice " or within the time allowed by the I.T.O. for the sake of simplicity and uniformity in the 1961 Act has been specifically mentioned 35 days (now 30 days) this period being reducible in the interest of revenue with the previous approval of the I.A.C.

ii> Penal interest was laid down to motivate assessee to pay within the stipulated time. The rate of interest was 4% initially, it was increased to 6% in 1965, 12% in 1972 & 15% in 1984. In 1984 a new provision was inserted whereby the Board was empowered to reduce or waive the interest only on recommendation of commissioner in this behalf.

iii> 1961 Act provided for extension of time for payment or that payment could be made in installments and only on failure to pay any of the installments could the assessee be treated in default. The C.B.D.T. introduced a scheme for income tax arrear demand.
The scheme enables the taxpayers to pay the tax within stipulated time with reduced interest rate.

The scheme operative from July 1, 1988 to September 1988 was applicable to all income tax demands certificated to the Tax Recovery Officers upto March 31, 1986. The assessees were entitled to a rebate of the interest, if they make full payment of arrear demands together with 50% of the interest during the period certificated upto 31st March 1986. The commission was empowered under the scheme to waive the interest if the full arrear demand together with 50% of the interest had been paid in full. No comment could be offered for want of statistical details as to working of the scheme. Without any such background it could only be said that scheme was an apt concept when Indian Income Tax is ill reputed for the mounting arrears of income tax.

Penalty payable when tax in default

One comes across assessee in default at three places in the Act:

1) If he fails to deduct tax at source or having deducted fails to credit to the Government.

ii) If he fails to pay advance tax

iii) If he fails to pay the tax demanded on regular assessment

Penalty under (i) is not imposable unless the person wilfully fails to deduct and pay the tax. In all other cases motive and intention are immaterial. Penalty can always be imposed when an assessee is in default and defaults in making payment of tax. This subject was found to have been dealt with u/s 46 (i) of the old Act. New provision departs from the old one in two material particulars:

(i) "A reasonable opportunity of being heard" has now to be given to the assessee before penalty is imposed.

(ii) If as a result of appeal the demand in respect of which penalty was imposed is vacated, the penalty was required to be cancelled. Under the 1922 Act, the assessee had to approach the commissioner for remission of penalty.

However, there is a change in the picture since 1971 under the old Act ‘Authority’ was wanting for levy of penalty. The lacuna has been made good by the 1970 Act and it is now specifically mentioned that the Income Tax officer is the person authorised to levy penalty.

Certificate to Tax Recovery Officer

The I.T.O shall forward to the Tax Recovery officer a certificate in case of a defaulting assessee on the receipt where of the recovery officer, in accordance with the rules laid down in the second schedule shall resort to any of the following modes of recovery:-

(i) attachment and sale of the assessee's movable property

(ii) attachment and sale of the assessee's immovable property

(iii) arrest of the assessee and his detention in prison

(iv) appointing a receiver for the management of the assessee's
movable and immovable properties.

Provision under the old Act

Under the old Act the Income Tax officer used to send a certificate to the collector and the collector on receipt of such certificate used to proceed to recover income tax arrears as if it were an arrears of land revenue. Collector had the powers of recovery under the Revenue Recovery Act 1890 and a civil court has under code of civil procedure 1908 for the purpose of the recovery of an amount due under a decree.

Undoubtedly the provision under the old Act was based on an intelligible differentia yet uniformity of procedure and identity of consequences for non payment of tax was a desideratum. Hence in deference to the views: "We have to face and accept wholly different consequences for non payment of income tax according as the assessee belongs to one state or the other. The nature of the tax is one and the same, and it is levied under a single Central Act, and yet the ultimate coercive process for recovery differ in nature and extent between state and state-------- speaking broadly, for enforcement of a levy of a central tax like the income tax there should be uniformity of procedure and identity of consequences for non payment of tax" [by Chandrasekhar Aiyar J in Purushottam Govindji Hallai]. In the new Act a self sufficient Recovery code for income tax has been provided for. Moreover an opportunity has also been taken to clarify that recovery through the Tax Recovery officer and in accordance with the second schedule is in addition to and inspite of other modes of recovery open to the I.T.O.

Tax Recovery officer to whom certificate is to be issued:

This is an innovative provision in the 1961 Act i.e. this has no corresponding provision in the 1922 Act. This is based on Madras High Court Judgment in sir Vankata Ramayya Rao Bahadurvaru. Though the income tax officer will send the recovery certificate to the Tax Recovery officer within whose jurisdiction the assessee resides or carries on business the Tax Recovery officer is empowered to forward the recovery certificate to another tax recovery officer within whose jurisdiction the assessee has property from which tax can be realised.

Position, described as above prevailed upto 1988-89 A.Y. After the amendments made by the Direct Tax Laws Act 1987 w.e.f. 1 April 1989, where the assessee is in default, the T.R.O. assumes jurisdiction by drawing up under his signature a certificate in the prescribed form specifying the amount of arrears due from the assessee instead of assuming jurisdiction through the Assessing Officer. Section 223 has been substituted by the same Act and with effect from the same date incorporating a similar change. Earlier the section specified the Tax Recovery officer or officers to whom the Assessing officer could send the recovery certificate
of tax arrears in a case the section now specifies the Tax Recovery officer or the Tax Recovery officers by whom the recovery is to be affected.

The validity of the certificate can not be questioned by the assessee. The only course open to him may be that where the certificate suffers from a patent or material irregularity his right to move High Court in writ jurisdiction stands. The Assessing officer may correct any errors in the certificate or withdraw it.

Some certificate officers have been very touchy about their rights and functions. They thought that once a certificate was issued to them the Income-tax officer became functus officio in the matter of giving accommodation to the assessee or realising the tax by any other means. It was found necessary to seek to disabuse minds of such recovery officers. Section 225 of the Act provides for such provision. This section provides that on time being given by the I.T.O. to assessee for payment the Tax Recovery officer shall stay the proceedings till the expiry of such time. The Income tax demand is a demand created by Income tax officer and he is primarily interested in its collection. In seeking the help of Recovery officer for the purpose, the Income tax officer does not become functus officio. He knows best whom to accommodate and when to accommodate in the matter of grant of time for payment of tax. At the same time, the Income-tax officer can simultaneously proceed to effect recovery through any of the modes open to him under section 226. But to avoid harassment to the assessee and multiplicity of proceedings", the Income tax officer shall keep the tax recovery officer informed of any tax paid or time granted for payment. When a second appeal etc is preferred the recovery of demand reduced in first appeal shall have to be kept pending and the certificate will have to be amended on the final decision of the issue.

Since 1 April 1989 T.R.O is empowered to take all actions himself instead of the earlier position where such actions could be taken by the Assessing officer and then intimation sent to the T.R.O. Now T.R.O. shall exercise all or any of these powers; i) grant time for the payment of any tax and when he does so, he shall stay the proceedings for the recovery of such tax until the expiry of the time so granted.

ii) Where the order giving rise to a demand of tax for which a certificate has been drawn up is modified in appeal or other proceeding under this Act and as a consequence thereof, the demand is reduced but the order is subject matter of further proceeding under this Act, the Tax Recovery officer shall stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.
iii) Where a certificate has been drawn up and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Tax Recovery officer shall, when the order which was the subject matter of such appeal or other proceeding has become final and conclusive, amend the certificate or cancel it.

5.10.4 Other Modes of Recovery

It has been already made clear that despite the fact of issuance of certificate, other modes of recovery are not barred. The provisions of the 1922 Act corresponding to the provisions contained in section 226 vesting the assessing officer with the power to require third parties to pay up amounts due to assessee have been held to be constitutionally valid.

Assessing officer is empowered to recover arrears of tax by modes other than issuance of a certificate of arrears. The non obstante clause in the opening words of sub-section (i) makes it clear that the Assessing officer can exercise this power concurrently with the issue of recovery certificate. This was the position upto A.Y. 1988-89. There has been a change since A.Y. 1989:

Under the old section the other modes of recovery of tax could be adopted by the A.O. only. The section has been amended to provide that all the modes of recovery mentioned in section (226) can be resorted to:

(i) by the Assessing officer, where no certificate of recovery has been drawn up by the tax Recovery officer u/s 222 and
(ii) by the Tax recovery officer, where a certificate of recovery has been drawn up by the T.R.O. u/s 222.

Thus after the T.R.O. draws up a certificate u/s 222 he assumes exclusive jurisdiction to take action u/s 226.

Other modes of recovery are
i) If the assessee is a salaried employee the Assessing officer or Tax Recovery officer can require the person paying the salary to pay it only after deducting the arrears of tax due from the assessee.

ii) If the assessee has to receive some money from any person or is likely to receive in future or such a person holds or may hold money belonging to the assessee, the Assessing officer or Tax Recovery Officer may require such a person to pay such money to him.

iii) If the money belonging to the assessee is in the custody of a court, the Assessing officer or Tax Recovery officer may apply to the court which holds such money to pay him an amount sufficient to discharge the arrears of tax due against the assessee.
iv) The Assessing officer or Tax Recovery officer may recover the money by distrain and sale of movable property. Where he is duly authorised by the commissioner in this behalf, the procedure in this behalf is laid down in the third schedule of the Act. The condition requisite for taking recourse to this mode is that the Assessing officer or Tax Recovery officer must be duly authorised in this behalf. In a very early case the execution of a distress warrant by a police official in pursuance of an authorisation issued by the Income tax collector without there being any orders issued by the local Government was held to be without jurisdiction under the 1918 Act or by the commissioner under the 1922 Act.

Recovery through State Government

State Government is empowered, in an appropriate case, where recovery of tax in any area has been entrusted to it under clause (1) of article 258 of the constitution with respect to that area or any part thereof to recover that tax as an addition to any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

Analogous provision can be found in the old Act also. In 1947 when Pakistan emerged as a new nation certain problems pertaining to collection of tax cropped up. In the 1922 Act certain new additions were made whereby reciprocal arrangements for recovery of tax due to either country from the assets of an assessee lying in the other country. Similar provisions are provided for in section 228 of the present Act. It is, also, however, provided that the provisions of this section shall remain in force only so far as there are provisions in force in the law of Pakistan for the recovery of tax by a collector of tax in Pakistan by receipt of a certificate from an officer in India. This section has been omitted with effect from 1 April 1989 as it outlived its utility. In 1972 a new section 228A is inserted for recovery of tax in pursuance of agreements with foreign countries.

Recovery of penalties, fine, interest and other sums.

Amounts other than tax proper i.e. penalties, fine, interest and other sums are to be recovered in the form of the recovery of arrears of tax. Similar provision can be found in the Old Act. It provides that any sum imposed by way of interest, fine, penalty or any other sum payable under the provisions of this Act shall be recoverable in the same manner as the recovery of the tax. This makes it expressly clear that sums referred to above would be recoverable as arrears of tax. In the context of 1922 Act it was held that penalty could be recovered from the assessee in the same way as arrears of tax.
Tax Clearance Certificate

A person who is not domiciled in India cannot leave the territory of India by land, sea or air unless he obtains a certificate from a 'competent authority' that he has no liability under various Acts mentioned therein, or that satisfactory arrangements have been made for the payments of all or any such taxes which are or may become payable by that person. Analogous provision was contained in the Old Act also.

The object of this section is to prevent any loss to the revenue. When any person desires to leave India for good and when he leaves no assets behind from which arrears of tax in respect of the income of such assets could be recovered. With effect from 1989 sub section 1 has been amended to secure that a person who is domiciled in India at the time of his departure, shall be required to obtain the tax clearance only if:

i) he intends to leave India as an emigrant; or
ii)he intends to proceed to another country on a work permit with the object of taking of any employment or occupation in that country; or
iii)in respect of him circumstances exist which in the opinion of an income tax authority render it necessary for him to obtain a tax clearance certificate.

The section therefore imposes an obligation on the persons leaving India to obtain a tax clearance certificate from the Assessing officer stating either that he has no liabilities under this Act and various Direct Tax Acts, namely the Excess Profits Tax Act, 1940; the Business Profits Tax Act, 1947; the Indian Income Tax Act 1922; the Wealth Tax Act 1957; the Expenditure Tax Act 1957; the Gift Tax Act, 1958 or that satisfactory arrangements have been made by him for payment of all or any such taxes which are or may become payable by him. Such a provision has also been incorporated in the revenue laws of other countries, say for instance Pakistan and Australia. Broadly speaking the wording of this section corresponds to that used in section 44(g) of the Pakistan Act.

In 1964 w.e.f. 06.10.1964 (By Direct Taxes ) (Amendment )Act, 1964 a new section viz. 230A is inserted in the Act. whereby restriction on registration of transaction of immovable property in certain cases have been imposed. Before its amendments by Finance (No.2) Act 1971, it was provided that a document of transfer of immovable property (other than agricultural land) valued at more than Rs. 50000/- shall not be registered unless a certificate from the Income Tax Officer (now Assessing Officer) to the effect that the transferor has paid or made satisfactory provision for payment of all existing tax liabilities under Income tax Act, wealth Tax Act, Gift-Tax and other direct tax laws or that the registration of the documents will not prejudicially affect the recovery of any such liability. With a view to making
this provision more effective in achieving the purpose for which it is intended and removing certain practical difficulties in its operation section 230A has been amended (by section 27 of the Finance (No.2) Act, 1971) making certain modifications on following lines.

i) The scope of the section has been enlarged to cover transfers of agricultural land at more than Rs.50000/-.

Agricultural land is liable to Wealth Tax and transfers of agricultural land are liable to gift-tax, capital gains arising from transfer of agricultural land situated in urban areas are liable to income tax. Apart from these considerations agricultural land is liable to be attached and sold for recovery of income tax arrears. Hence it appears only reasonable to bring agricultural land within the scope of the restriction on registration in cases where tax liabilities remain unsatisfied.

ii) The provision has been extended to cover existing liabilities under the companies(profits)Sur Tax Act, 1964 as also the Super Profits Tax Act 1963 which preceded it.

iii) The C.B.D.T. has been empowered to exempt by notification in the official Gazette, any institution, association or body or any class of institutions associations or bodies from the requirement of obtaining a tax clearance certificate under this provision.

This power has been conferred on the Board so as to obviate practical difficulties in the case of institutions such as banks, Life Insurance Corporation etc. which advance moneys in a large number of cases on the mortgage of immovable property and have to release the property from the mortgage when the debt has been discharged by the borrower. The requirement of a tax clearance certificate in such cases throws an avoidable administrative burden on the institutions concerned and also on the Income-tax Department, without any significant advantage to the revenue. Under the new provision the Board was required to record the reasons for exempting any institutions, etc. from the requirement of obtaining a tax clearance certificate.

In 1989 a change was effected "one lakh" was substituted for fifty thousand and in 1988 'two lakhs' were substituted for fifty thousand w.e.f. 1988.

The section prohibits a registering authority appointed under the Indian Registration Act, 1908 from registering any document purporting to transfer, assign, limit or extinguish the right title, interest of any person to or in any property valued at more than two lakh rupees unless the person concerned produces before such authority a tax clearance certificate from the Assessing
Officer in respect of his liability under the Direct Taxes enumerated in the Section. The no objection Certificate will be required from the Income Tax Department only in cases where the value of the property to be transferred is more than two lakhs of rupees as per the circle rates fixed by the Collector concerned. This provision applies to the documents which are required to be registered under the provisions of clause (a) to clause (e) of subsection (1) of the Indian Registration Act, 1908. Lease is also a form of transfer of property.

**Period for commencing recovery Proceedings:**

Under the 1922 Act the period for proceedings for recovery was one year from the last day of the financial year in which the demand is made. The provision of the present Act was the exact replica of the provision in the old Act. In 1984 this period was raised to three years from the former one year w.e.f. October 1984. From 1 April 1989 the section was omitted.

**Rationale of Omission of the Provision.**

Section 231 provided that no proceedings for the recovery of any sum payable under the Act shall normally be commenced after the expiry of the three years from the last date of the financial year.

Several modes of recovery specified in the statute (Chapter XII) shall not, in any way affect (a) any other law for the time being in force relating to the recovery of debts due to Government, or (b) the right of the Government to institute a suit for the recovery of the arrears due from the assessee. This provision was contained in the old Act (i.e. 1922). The law continued in the same terms as originally enacted to date excepting a few changes of nomenclature of Assessing Officer substituted for Income Tax Officer in the year 1987. In the interest of revenue collection of tax is important. Contrarily due to deduction of tax at source or excess payment of advance tax assessee becomes entitled to get refund. The subject of refund is discussed below:

**5.11.1 Refund:**

A refund implies some amount of tax which has already been paid to the department which has got to be returned, either under a further adjustment of tax liability by the assessing authority or on the basis of a subsequent proceeding by an appellate or other authority. It is simply a repayment of amounts over paid under whatever mode or set of circumstances. The overpayment is recognised by the statute and ascertained for purposes of repayment to the assessee. The claim for refund may arise due to excess deduction of tax at source, double taxation of the same
income in India and a foreign country with which our Government has not entered into any agreement for avoidance of double taxation, payment of advance tax in excess of the demand due to regular assessment and an assessment made by the Assessing Officer is revised by him in consequence of an order of rectification u/s 154 or an appellate order under sec. 251 and or section 254 or an order of revision by the Commissioner u/s 264 or in consequence of a judgment of the High Court or Supreme Court u/s 260 or section 261.

The law relating to refunds was contained in sec. 48 of the 1922 Act. It is amplified in sections 237 to 245. Sec. 237 of the present Act corresponds to sec. 48(1) of the 1922 Act. There is no material change in the law so far as this section is concerned. This section deals with refund of excess tax paid on behalf of the assessee. The claim for refund under section 237 for any assessment year is allowed only after determination of the amount with which the assessee is properly chargeable under the Act for the year in question.

Person entitled to claim refund in certain special cases:

Where the income of one person is included under any provision of the Act, in the total income of any other person the latter alone shall be entitled to a refund in respect of such income. Where through death, incapacity, insolvency, liquidation or other cause a person is unable to claim or receive any refund due to him, his legal representative or the trustee or the guardian or receiver, as the case may be, are entitled to claim or receive such refund for the benefit of such person or his estate. [Section (238)]. This provision warrants no comments.

Every claim for refund is to be made in the prescribed form and verified in the prescribed manner. By prescribing a given form it is intended to facilitate the refund and not to bar or hinder the right of an assessee to get his money back. The limitation period prescribed u/s 239(2) only applies to cases or contingencies mentioned therein. It can not apply to claims for refund of tax on account of reversal or modification of judgment on appeal etc. The Board has time and again relaxed the rigour of this section 239(2) by directing the officers to accept belated claims for refund and condone the delay. The similar provision was contained in Sec. 50 of the 1922 Act.

Such a relaxation was a desirable development for some years past a tendency was on an increase to blame the Government that Govt. was eager to collect taxes but slow to refund the amounts to the assesses. This type of relaxation goes a long way in refuting the charge against the department.

Refund on appeal etc. :

This refund is by dint of any amount that becomes due to the
assessee as a result of any proceedings under the Act. It imposes an obligation on the Assessing Officer to refund the excess that has been collected as a result of an order of Dy.Commissioner (appeal) or as a result of any order passed in appeal in other proceedings of the Act. Here the obligation imposed on Assessing Officer is not to pass orders but to refund the excess amount of tax collected. This is a mandate on revenue to make a refund even without a demand and if demand is properly made it cannot be refused. The expression "or other proceeding under this Act" was understood as governing a case where the assessment was completed under the 1922 Act but a refund became payable as a result of later proceedings when the 1961 Act has come into force. In the interest of revenue the ITO has power to withhold the refund. This is a new provision and was introduced for the first time in 1961 Act. The measure is only interim and not absolute. It does not render the judgment of a Superior Court ineffective nor does it amount to making inroads into the judicial power of the courts. There has been a change in section 241 since 1 April 1989. Under the old section a refund could be withheld only if it arose as a result of an order passed under the Income Tax Act. Refunds due under sub section (1) (143) could not be so withheld as no order was required to be passed under this section. To remove this anomaly section 241 was amended to provide that any refund becoming due under the provisions of Income Tax Act could be withheld in the circumstances mentioned in the section.

Correctness of any assessment or other matter decided which becomes final and conclusive cannot be challenged by the assessee in claim of refund nor can he ask for review of the same.

This section bars the challenge to the validity of an assessment because right to claim a refund does not include right to challenge the validity of an assessment which becomes final and conclusive.

Interest on delayed refunds:

For delay in payment of interest Central Government has to pay simple interest (delay not on the part of the assessee). This is a new provision and it was not to be found in the 1922 Act. Initially, the period for payment of interest was within three months from the date on which total income is determined in case where the total income of assessee does not consist solely of income from interest on securities and dividend and in any other case six months from the date on which claim is made.

With a view to expediting the grant of refunds, as uniform period of three months has not been specified beyond which any delay in grant of refund will entitle the assessee to payment of interest to him by the Central Government. Certain change has been
made with a view to facilitating the adherence to this reduced
time limit it has been secured that the three months period will
expire at the end of a calendar month. Thus:

1) In cases where the total income of the assessee consists
solely of interest on securities or dividends or both, the three
months period will be reckoned from the end of the month in which
the claim for refund is made.

2) In the case of refunds arising on assessment, the three
months period will be reckoned from the end of the month in which
the total income is determined.

3) In the case of refund arising as a result of any order in
appeal, revision or any other proceeding the three months period
will be reckoned from the end of the month in which the order in
appeal, revision or other proceeding is passed.

4) In cases where refund arising out of any order is withheld,
on the ground that the order giving rise to the refund is the
subject matter of appeal etc. the three months period will be
reckoned from the end of the month in which such order is passed.

Rate of interest:

The rate of interest has undergone a change from time to time. At
present the rate of interest under section 244A is one per cent
per month or part thereof w.e.f. 1 Oct. 1991. Changes in rate of
interest are shown in the following table:

<table>
<thead>
<tr>
<th>From</th>
<th>Rate of Int.</th>
<th>Name of the Statute</th>
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<tbody>
<tr>
<td>1 April, 1962</td>
<td>4% P/annum</td>
<td>Income Tax Act, 1961 (original)</td>
</tr>
<tr>
<td>1 April, 1965</td>
<td>6% P/annum</td>
<td>Finance Act, 1965</td>
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<tr>
<td>1 October, 1967</td>
<td>9% &quot; &quot;</td>
<td>Taxation Laws (Amendment) Act, 1967</td>
</tr>
<tr>
<td>1 April, 1972</td>
<td>12% &quot; &quot;</td>
<td>Finance Act, 1972</td>
</tr>
<tr>
<td>1 October, 1974</td>
<td>15% &quot; &quot;</td>
<td>Direct Tax Laws (Amendment) Act 1987</td>
</tr>
<tr>
<td>1 April 1989 to</td>
<td>1.5% P/month</td>
<td>D.T.L. (Second)</td>
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<td>30.9.9</td>
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</table>

Source: Compiled from various Acts and Amending Acts.

Note: Section 84 of the Taxation Laws (Amendment) Act 1984
clarified that the increase in interest will apply only in respect of any period falling after 30 September, 1984 even in cases where the interest became chargeable or payable from an earlier date.

Here the suggestion was that since the interest paid by the assessee for delayed payment of tax was not allowed as a business expenditure, interest received from the Government for delayed refunds should similarly enjoy tax exemption. The Central Direct Taxes Advisory Committee was informed that interest charged by the Government of tax was in the nature of personal liability which could not be allowed as a deduction in the computation of the taxable income. However suitable instructions would be issued to the Income-Tax officers (now Assessing Officers) to minimise the time lag between receipt of returns and completion of assessments and issue of refunds. Evide relevant extracted from the minutes of 15th meeting, Central Direct Taxes Advisory Committee held on 6th August 1970.

Rates of interest have been being continually increased since 1961 to date. This is but in fitness of things in view of the increasing rates of interests in the money market since then. The amounts in the form of excess payment of tax is blocked with the Government and natural justice, therefore warrants that Government pay interest on delayed refunds at increasing rates. Provisions contained in Section 243 have been transferred to the new section 244A. Hence this section is inoperative from the assessment year 1989-90.

Interest on refund where no claim is needed:

Where refund is due to assessee in pursuance of an order referred to in section 240 and the assessing officer does not grant the refund within a period of three months (six months upto and including assessment year 1970-71) from the end of the month in which such order is passed. The payment of interest is to be reckoned on the amount of refund due from the date immediately following the expiry of three months aforesaid to the date on which the refund is granted. Likewise, payment of interest is also provided for on refunds withheld by the assessing officer with the previous approval of the Commissioner. The gist of this provision could be thus summarised:

1) A refund shall be due to the assessee.
2) It should be due as a result of any order passed in appeal or other proceeding under the Act as provided in section 240. Once that refund is payable it should be paid to the assessee without his having to make any claim in that behalf.
3) If the assessing officer does not do it within a period of three months from the end of the month in which the appellate order is passed the Central Government shall pay to the assessee simple interest at 15% per annum on
4) The period for which the interest at 15% shall be paid is from the date immediately following the expiry of the aforesaid period of three months to the date on which the refund is granted.

Consequent upon the introduction of an integrated provision as section 244A the provisions of this section (i.e. sec.244) are rendered inoperative from the assessment year 1989-90.

**Interest on refunds:**

Section 244A as has been said above emerges as a new integrated provision from the year (A.Y) 1989-90. Before the introduction of this section the subject matter was dealt with under sections 214- relating to payment of interest to the assessee on the excess amount paid as advance tax; section 243 - relating to payment of interest to the assessee for delay in granting the refund after a claim for refund was made or after the refund was determined and sec.244 - relating to payment of interest to the assessee for delay in granting refund as a result of appeal etc.

**Changes Concomitant with introduction of sec.244A:**

(i) if the refund is out of any advance tax paid or tax deducted at source during the financial year preceding the assessment year, interest shall be payable for the period starting from 1st April of the assessment year and on the date of grant of refund. No interest shall however be payable, if the amount of refund is less than 10% of the tax determined on regular assessment,

(ii) If the refund is out of any tax other than advance tax or tax deducted at source or penalty, interest shall be payable for the period starting from the date of payment of such tax or penalty and ending on the date of the grant of the refund.

The new section inserted by the Amending Act 1987 provided for calculation of payment of interest to the assessee only where the refund became due to him in pursuance of an order passed under the Act. It did not provide for payment of interest where refund became due to the assessee under provisions of the new section 143(1) without passing an assessment order. The Amending Act 1989 has, therefore amended sub section(1) of this section to provide for calculation and payment of interest to the assessee on refund becoming due to him in pursuance of total income determined under the provisions of the new section.

Numerical examples to illustrate calculation of interest under Section 244 A are given in Appendix II.
set off of refunds against tax remaining payable:

If refund is found due to any person after giving an intimation in writing to such person of the action proposed to be taken a set off of refund against any sum payable by the person may be made by assessing officer, Deputy Commissioner (Appeals), Commissioner (Appeals) or Chief Commissioner as the case may be.

A parallel provision is to be found in the old Act. In 1977, were inserted "Commissioner (Appeals)" were inserted after the words Appellate Assistant Commissioner. Consequent upon the creation of this new appellate authority. In 1987 change was directed to change of nomenclature of the authorities.

5.12.1 Settlement of Commission:

After the war there was a phenomenal increase in business profits of which despite the supplemental taxes levied to siphon of extra profit viz. EPT 1940, and BPT 1947 managed to escape taxation. Promulgation of taxation of Income (Investigation Commission) Act 1947 providing a machinery whereby cases of escapement of tax could be investigated by a high power commission and a proper determination of taxes due or, in the process a settlement arrived at with the concerned assessee in regard to their proper tax liabilities under the above Acts. However crucial provisions of the Act were declared unconstitutional by the Supreme Court. The malaise of tax evasion has even been on increase since after the second world war. Legislative and other attempts to curb it could be at best a limited success. The special bearer bonds (Immunities and exemptions) Act, 1981 survived a constitutional attack but with strong strictures by the Supreme Court regarding the ethical justification of such a procedure. The recently enacted Remittance of Foreign Exchange and Investment in Foreign Exchange Bonds (Immunities and Exemption) Act, 1991 and voluntary Deposits Act 1991 are other steps in this direction. There can, however be no legitimate objection to a procedure whereby an assessee may be enabled to come forward with a proposal to settle his tax liability in the overall context of the position over a period of years and the investigation, examination and acceptance of such a proposal by an independent Tribunal after a proper scrutiny of his affairs and assets. It is with a view to implement such an objective that on the suggestion of Wanchoo Committee Chapter XIX A has been introduced. The chapter, inserted w.e.f. 1 April 1976 has undergone some changes of a substantial nature by the Taxation Laws (Amendment) Act 1984.

Initial constitution of the Commission states that the settlement commission shall have a Chairman and two other members. The effect of this provision is that the settlement commission cannot function if the vacancy of any of its members is not filled immediately. With a view to overcoming this difficulty the Finance Act 1982 has amended the relevant provisions to secure that the
settlement commission shall be competent to function even if the post of the members (other than the Chairman) is vacant. Where in any case the chairman and the other member differ on any point or points will be referred to the new member and the matter will be decided according to his opinion. Such a provision was recommended by the Choksi Committee. These provisions have been given effect from 1st April, 1982.

Before 1986, the settlement commission used to consist of a chairman and two other members. In 1986, a change has been brought about in the constitution of the commission. In view of the heavy work load of the settlement commission and in the interest of early finalisation of cases, it has been provided by the Amending Act that the settlement commission shall consist of a chairman and as many vice-chairmen and members as the Central Government thinks fit. The qualification for these posts has been couched in such wide terms as to enable the Government to appoint men of integrity, ability and special knowledge of tax laws and accounts. No specific source of recruitment except that the first proviso to sub-section (3) shows that they may be recruited from among the members of the Central Board of Direct Taxes.

In view of the wider scope offered by the Statue, it is desirable that the commission be so constituted as to consist of persons drawn from several areas viz. the judiciary, income tax service, legal service, legal or accountancy professions, economists, etc. so that knowledge and experience gathered from the variegated fields of expertise can be brought to bear on the problems that arise.

**Jurisdiction and power of settlement commission:**

Chapter XIX A of the Income tax Act deals with the entire scheme of settlement of cases. With a view to ensuring the proper functioning of a Bench in certain situations which have so far prevented it from discharging its powers, a change has therefore been brought about in 1987 (by introducing new sections 245 BA and 245 BB and 245 BC). In case the Chairman, Vice-chairman or any of the members of the Bench is unable to discharge his functions, for whatever reasons, the remaining two persons will now be competent to constitute a Bench and pass orders on matters covered by applications for settlement. In such a situation the senior member will preside over the Bench, where a presiding officer looking to the nature of a case considers that it should be heard by a Bench consisting of 3 members, he may make a reference in this regard to the chairman for transfer to such Bench as the chairman deems fit. Where there is a difference of opinion between the members of a Bench the majority decision will prevail. Where the members are equally divided, they will refer the points of difference to the chairman who will either hear point(s) himself, or refer the point(s), for hearing by one or more of the other members of the settlement commission. The Amending Act has conferred powers
Central Government to authorise a Vice-chairman to act as a chairman in certain situations.

A Bench of settlement commission is to consist of three members which in certain cases may function even with two members. At present Income Tax Settlement Commission is functioning through four Benches, i.e. the principal Bench at Bombay, Calcutta and Madras. There can be cases when the two Benches of settlement commission may hold contrary views on a particular issue. Such a situation needs to be avoided in order to provide uniform treatment to the tax payers who approach the commission for settlement of their cases.

A change, therefore, has been brought about to the effect that the Chairman of Income Tax settlement commission, may for the disposal of any particular case, constitute a special Bench consisting of more than three members.

The Central Government has been empowered to notify the places at which the principal Bench and the additional Benches shall ordinarily sit. New Delhi has been notified to be the Principal Bench. The Additional Benches shall be at Bombay, Calcutta, Madras.

5.13.1 Appeal, Revision etc.:  

If an assessee be not satisfied with the order of the A.O. he can prefer appeal or may apply for revision.

Period upto 1916,

During the initial phase of development of Income Tax appeals against assessments were to be made to the Collector before the date specified in the notice. The collector could hold the hearing at any time and place as he liked, and the assessee had to subordinate his own convenience to that of the collector.

Corresponding to the division of labour in the assessment of income, there was a similar sharing of the work of revision. The assessor was permitted to hear appeals against the tax assessments of less than Rs.42. Appeals against the assessor lay to the sub-divisional officer. The Income tax Deputy collector was the next superior, being authorised to deal with objections to assessments. As regards assessments above Rs.250, the collector himself heard the objections. The appellate authority above the collector was the commissioner but appeals, relating to amounts of less than Rs.250 could be entertained only at his discretion. No civil court had the power to entertain the suit to set aside or modify long assessment made under the Act. The administrative machinery was therefore entirely supreme in the matter of assessment, revision and appeal.
5.13.2 1916 and after

After 1916 Income tax in India underwent some radical changes. 1922 Act gave a solid foundation to Income tax. Under this Act appeals against I.T.O's decision lay to the Assistant Commissioner. The Assistant Commissioner had the power to enhance as well as reduce the assessment fixed by the I.T.O. Appeals against the Assistant Commissioner's judgment lay with commissioner but only in case he imposed a penalty or enhanced the original assessment. On a question of fact there was no appeal. On a question of law however the assessee could ask the commissioner to state the case to the High Court for which he had to pay a fee of Rs.100. The commissioner could also make a reference to the High Court, either on his own accord or at the request of the Income tax officer, where he declined to do so and the assessee was not satisfied with his decision, the assessee could move the High Court to compel the commissioner to state a case and if the court so ordered the commissioner had to present the case before it. The court could also ask him to supplement the reference on points that if though necessary for arriving at a proper judgment of the case. The decision of the High Court was binding upon the commissioner as well as on the assessee. There was the usual provision of the appeal to the privy Council.

The right of appeal however, was not granted to every assessee. Only those who conformed to the law, i.e. had submitted returns of their income, presented accounts and otherwise observed provisions of the Income Tax Act, were given the right of appeal. Other assessee not conforming to the aforesaid requirements were denied the right to appeal against their assessments. But if there was some reasonable excuse for the delay in presenting returns, the assessee was restored his privilege of appeal on submission of his return.

In addition to revision through appeal, the commissioner had the power to review any proceedings under the Act, and if necessary, after the assessment. But the assessee had the right to be heard before the assessment was enhanced.

Thus, with the enactment of 1922 Act there had been a substantial improvement in the matters of appeal, revision etc. Upto 1916 there was an absolute supremacy of the administrative machinery alone but with the enactment of the 1922 Act there could be appeal above the departmental domain albeit on points of law. Thus the executive were the sole appellate authorities on matters of fact, there were provisions for appeal on matters of law.

5.13.3 Appeals & Revision under the present Act:

The first appeal against the order of an Assessing Officer lay with the Deputy Commissioner (Appeals) or Commissioner (Appeals) as the case may be. The appeal is to be
filed in, prescribed manner within 30 days of the following dates:

i) Where the appeal relates to any tax deducted u/s. 195(1) (payment to non resident) the date of payment of tax,

ii) Where the appeal relates to any assessment or penalty, the date of service of the notice in this connection,

iii) in any other case, the date on which intimation of the order sought to be appealed against is served.

The Deputy Commissioner (Appeals) or Commissioner (Appeals) as the case may be, may admit an appeal after the expiry of aforesaid 30 days if he is satisfied that the appellant had sufficient cause for not presenting within time.

No appeal shall be admitted unless at the time of filing of the appeal:

i) where a return has been filed by the assessee, the assessee has paid the tax on the income returned by him, or

ii) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which has become payable by him.

The corresponding provision to section 249 is to be found in sections 30(2) and 30(3) of the 1922 Act. The initial provision continued upto 1975. In 1975 sub section 4 was inserted (whereby appeal could not be admitted unless tax due is paid or in case if failure to file a return amount equal to advance tax is paid), change of nomenclature of authorities was made in 1987 e.g. the words Deputy Commissioner (Appeals) were substituted for Appellate Assistant Commissioner.

Power of the Deputy Commissioner (Appeals) or (as the case may be) the Commissioner (Appeals):

The appellate authority while deciding an appeal is clothed with very wide powers so as to do justice to the assessee and also to the interest of revenue. His power in admitting and disposing of an appeal are plenary. He can dismiss an appeal which is incompetent. He has the power to admit appeal filed beyond time if satisfied that there was sufficient cause for the delay. He may set aside an assessment order where it is alleged that ex parte assessment was made without the assessee having had sufficient opportunity to make representations during the course of assessment enquiry [Imam H.S vs. C.I.T. (1988) 171 ITR 214 (AP)]. He can evoke his own procedure, where there is no provision in the Act or rules, so long as it does not violate the statutory rights of the parties before him or offend the principles of natural justice. He can consolidate or hear together appeals relating to several years and dispose them of, if necessary by a consolidated order. In dealing with the appeal, his powers are coterminous with those of the Assessing Officer. He can
do what the A.D. can do and also direct him to do what he has failed to do.

5.13.4 Appeals to the Appellate Tribunal:–

Constitution of the Tribunal:

This Tribunal shall consist of as many judicial and accountant members as the Central Government thinks fit. A judicial member must have held a judicial post in the territory of India at least for ten years. An accountant member must have at least ten years of practice in accountancy as a Chartered Accountant or who has been a member of the Indian Income Tax Service Group A and has held the post of Commissioner of I.T. or any equivalent higher post for three years. Central Government appoints judicial member of the Appellate Tribunal to be the President thereof. Once or more member or members may be appointed vice-president/s of the Tribunal. The Central Government may appoint one of the vice-presidents of the appellate Tribunal to be the senior vice-president thereof. The senior Vice President or a Vice-President exercise such of the powers and perform such of the functions of the President as may be delegated to him by a general or special order in writing.

The schemata of delegation of powers to Vice-President by the President is as follows:–

<table>
<thead>
<tr>
<th>Vice President’s Zones.</th>
<th>Benches under their jurisdiction.</th>
<th>Functions delegated.</th>
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<tbody>
<tr>
<td>Western Zone</td>
<td>Bombay Benches</td>
<td>i) To constitute the Benches within the respective jurisdiction of the Vice-Presidents.</td>
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<tr>
<td>Bombay</td>
<td>Poona Bench</td>
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<td>Nagpur Bench</td>
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<td>Ahmedabad Bench.</td>
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<tr>
<td>Southern Zone,</td>
<td>Hyderabad Benches</td>
<td>ii) To supervise and control the work of the different Benches in the respective Zones of the Vice-Presidents.</td>
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<tr>
<td>Madras</td>
<td>Banglore Benches</td>
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<td>Cochin Benches</td>
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<td>Northern, New Delhi</td>
<td>Delhi Benches</td>
<td>iii) Transfer of appeals and applications from one Bench to another at different stations within</td>
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<td>Chandigarh Bench</td>
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<td>Indore Bench</td>
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<td>Zone of the Vice President</td>
<td>Limits of spheres of duty</td>
<td>Power delegated</td>
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<td>Senior Vice Presidents</td>
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<td>Income Tax Appellate</td>
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<td>Tribunal, Northern Zone,</td>
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<td>1) All Districts of</td>
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<td>2) Gujrat</td>
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<td>3) Raipur Division</td>
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<td>of Madhya Pradesh</td>
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Limits of spheres of duty and powers delegated to the vice presidents by the President are as shown in the following table.

Table 5.14 Showing spheres of duties and powers delegated to vice Presidents.
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
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</thead>
<tbody>
<tr>
<td>4) Union Territory of Dadra, Nagar Haveli and Union territory (now a separate state) of Goa, Daman and Div.</td>
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<tr>
<td>Vice President Southern Zone Madras</td>
<td>1) Tamil Nadu</td>
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<tr>
<td>2) Union Territory of Puducherry including Maharashtra.</td>
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<td>3) Andhra Pradesh</td>
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<td>4) Kerla</td>
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<td>5) Union Territory of Lakshadweep</td>
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<td>6) Karnataka</td>
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<tr>
<td>1) West Bengal</td>
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<tr>
<td>2) Union territories of Andaman and Nicobar Islands</td>
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<td>3) Bihar</td>
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<td>9) Manipur</td>
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<tr>
<td>10) Union Territories (now a districts of Rohilkhand Division Meerut and Kumaon Divisions and Agra, Aligarh and Mathura Districts of Agra Division)</td>
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</table>


Note the notification as amended is effective from 1 August 1984.

The Appellate Tribunal constituted under the Act is not an income tax authority (Section 116 of the I.T.Act 1961.) The Tribunal is the ultimate fact finding authority under the Act as only a reference to the High Court or Supreme Court on a question of Law arises from its orders. (Sec. 256 and sec. 257 ibid)

**Appeals to the Appellate tribunal**

Right to appeal to the Appellate tribunal has been conferred on both the assessee and the revenue (Tribunal's Letter F.No.38 -
Act (AT) 81, dated 19 August 1981 to M/S. Shah Patel and co. chartered Accountants, Jaipur cited in Sampati Iyengar’s Law of In New Delhi 8th edition. 1992 P/5529] The words " the Assessing officer or notwithstanding that he may be may notwithstanding that he may not have appealed against such order or any part thereof file a memorandum of cross objections against any part of the order [sub section (4) of section 253] postulate that in respect of the same order of appellate authority there may be an appeal by the assessee as to one part and an appeal by the Revenue as to the other. here the assessee or Revenue has preferred on appeal to the Tribunal against that part of the order of the appellate authority which consists of decisions recorded against him, the other party, if he had not already appealed, may file cross objections against that part of the order of the appellate authority which consists of decisions with which he is dissatisfied. The appeal by the assessee or by the Revenue may be against any parts of the order of the appellate authority which are against him and by which he is aggrieved. It is therefore, imperative that there must be a decision of the appellate authority by which the assessee or the Revenue is aggrieved before he can prefer an appeal against that part of the order of the appellate authority containing such decision. Where the assessee has wholly succeeded before the appellate authority there is no scope for his filing any appeal or cross objections before the Tribunal. If a particular matter has not been considered and decided by the appellate authority and the decision on it does not form part of the order of the appellate authority there can be no appeal against it.

Appeal or cross objection is required to be accompanied by a fee of Rs.200 only [originally it was Rs. One hundred subsequently raised to Rs.200 by Finance Act 1981 w.e.f. 1 June 1981] The vires of the corresponding provision of the 1922 Act was unsuccessfully challenged on two grounds:

(a) that the fee was in nature of a court fee which Union Legislature had no right to levy and

(b) The changing of a fee only in case of an appeal by the Department was discriminatory. [Sheshadri (RM) Vs. ITO (1954) 25 ITR 400 (Mad.)] The fee payable under section 253 is payable once and for all and is not refundable because the appeal is dismissed as incompetent or time barred. Nor can it be recovered by a successful applicant from the opposite party as the Tribunal has no power to award cost.

Orders of Appellate Tribunal

Order passed by the Tribunal is final [section 254] except to the extent provided for in section 256 (Reference to High Court) The Assessing officer, has therefore a duty to carry out the directions of the Tribunal. [Bhopal Sugar Industries Ltd vs. ITO (1960) 40 ITR 618 (SC)] A reference to the High Court lies from there order of the Tribunal on question of law. This means that
the Tribunal is the final fact finding authority. [Patnaik & co. Ltd. v. CIT (1986) 161 ITR 365 SC] Finality is attached to the order of the Tribunal regarding assessment [sec. 254(4)]. But the finality is not attached to every observation made by the members of the Appellate Tribunal unless the observation is so inextricably connected with the conclusion regarding assessment. A decision of the Supreme Court does not automatically have the effect of vacating the order of the Tribunal which has been statutorily made final and which has already been given effect, its legal validity is not in any way affected by the decision of the Supreme Court. Even a wrong order has a finality and unless that finality is disturbed by a process known to law or by a process authorised by law, the rights of the assessee and Revenue will continue to be governed by the order of the Tribunal [Sheshayee Paper & Boards Ltd. v. IAC of Income Tax (1986) 157 ITR 342 (Mad.)].

5.14.1 Reference to High Court

At present there are three preconditions for a reference to High Court: [sec. 256]
i) there must be an "order under section 254" of the Appellate Tribunal.
ii) a question of law should arise therefrom and
iii) the question of law should have been raised before, and decided by the Tribunal. The preconditions have been specifically enacted to ensure that the High Courts are not flooded with such applications. They should be strictly complied with before the high court will entertain any questions under the section. When these three ingredients coexist, a reference to the High Court is permissible.

Prior to the advent of the constitution, the Government of India Acts prohibited any interference by the High Courts in revenue matters in the exercise of their original jurisdiction [section 106 of the Government of India Act 1919; section 226 of the government of India Act 1935]. However, the Revenue enactments laid down a procedure whereby the jurisdiction of the High Courts could be invoked to help in the interpretation of a provision of the statute. [section 15 of the Income-tax Act 1918, section 66 of the Income-tax Act 1922.] According to observation of supreme Court this jurisdiction was of a purely advisory nature and was intended more to secure general interpretation EC.I.T. vs. Scindia Steam Navigation Co. Ltd. 1961 42 ITR 589, 608, 609 (SC) and guidance than to afford relief in any particular case. In discharging its basic duty to decide the question of law, the court has to look into the question of facts on which the question of law arises and it has an implicit and ancillary power to interpret any question of fact that is essential to determine the question of law which arises. [Nandial Kasera vs. CIT (1968) 70 ITR 29 (Cal)] Apart from the constitutional limitation on the High Courts the Income tax Act itself precluded all civil courts from
entertaining any suit to set aside or modify any assessment made under the Act or any suit for damages against any officer of the Government for any acts done by him under the Act in good faith. [Section 67 of the Indian Income-tax Act 1922 and sec.293 of the Present Act] The Income-tax Act 1961 retains these characteristics of revenue legislation, but the basic pattern has changed on account of three important factors: In the First place, the bar on the High Courts against dealing with revenue matters was removed by the constitution [Proviso to Article 225 of the constitution] IN the second place, the constitution declared [Article 265 of the constitution that no taxes shall be levied or collected save by authority of law, and conferred power by the widest terms possible, on the High Courts and Supreme court to issue writs and to prevent any manner of illegality or impropriety [Article 226 and Article 32 of the constitution] Thirdly a right was conferred on the tax paper to test in courts the validity of the provisions of the revenue law on the touchstone of the fundamental rights guaranteed by the constitution. The result of these for reaching changes has been that the High Courts and the Supreme Court are (after the constitution) not merely advisers on specific points on which their opinion is sought, but have been given the vital role of seeing that the revenue laws are enacted in accordance with the constitution and also that all acts and powers under the enactments are exercised in accordance with the statute and with due regard to the principles of natural justice.

The jurisdiction of High court section 256 is advisory and no more. But this cannot be said to mean that while acting in exercise of its advisory jurisdiction, it is deprived of its judicial character. It is incumbent on the court to give an opportunity of hearing to the opposite party, and if it does not do so, the order is vitiated and becomes non est in the eyes of law. In CIT Vs. Cellulose Products of India Ltd. [(1991) 192 ITR 155 (SC)] the Supreme Court has held that it is settled law that the High Court hearing a reference under the Income-tax Act does not exercise and appellate or revisional or supervisory jurisdiction over the Appellate Tribunal and that it acts in a purely advisory capacity.

5.14.2 Statement of case to Supreme Court in certain cases

If the Tribunal is of opinion that, on account of a conflict in the decisions of the High Courts in respect of any particular question of law, it is expedient that a reference be made direct to the Supreme Court, the Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court. [section 257] The exercise of the power is discretionary and neither the commissioner nor the assessee may insist that the Tribunal should refer the Supreme Court. The reference, if made, is routed through the President of Income-tax Appellate Tribunal. This is, perhaps, just intended to ensure
that references are not made to the Supreme court in a number of cases on the same point by different Benches of the Tribunal and with a view to centralise such reference on grounds of practical convenience.

A direct reference to the supreme court is to be heard by a Bench of not less than three judges [The Supreme court Rules (order xxxviii A) provide the procedure to be followed on references under the Income Income-tax Act.] The powers and procedure of the supreme Court on receipt of the reference would be governed by the provisions of sections 258 and 260. The Supreme Court may refer the case back to the Appellate Tribunal direct for the purpose of making additions or alterations to the case stated.

The provisions contained in section 257 are new to the Act. They have, thus, no corresponding provisions in the 1922 Act. This provision was newly added on the recommendation of the Direct Taxes Enquiry Committee.

5.14.3 Appeals to the Supreme Court

An appeal; lies to the Supreme Court from any judgment of the High Court delivered on a reference made under section 256 in any case which the High Court certifies to be a fit one for appeal to the supreme court. [Section 261 of the 1961 Act]

The parallel of this provision is to be found in the 1922 Act [sec.66A (2) of the 1922 Act] section 261 since its enactment has remained unchanged.

An appeal lies to the Supreme Court in a case which the High Court certifies as a fit one for appeal to the Supreme Court. The grant of certificate is not a matter of discretion but a judicial process.

Hearing before the Supreme Court

Provisions of the code of civil Procedure, 1908, relating to appeals to Supreme Court, shall so far as may be, apply in the case of appeals under section 261, as they apply in the case of appeals from decrees of a High Court. This merely attract the facilities attendant on procedure and does not attract the provisions of the code of civil Procedure, 1908 conferring a right of appeal. The reference is broadly to the provisions of order XLV of the code of Civil Procedure which relate to the details regarding security, the printing of records and their dispatch, the admission of appeal the rectification of record by addition or deletion of parties, service of notice of appeal and the like. The procedure after the appeal is numbered and admitted in the Supreme Court, is outlined in the Supreme Court Rules, 1966 which apply to the appeals under this section as well. Before 1950, the
right of appeal was to the Privy Council and the Federal Court.

5.15.1 Penalties

In a taxing statute, the legislature must envisage and provide for cases where the assessee attempts to contravene the provisions of the Act and evade payment of the rightful taxes levied thereunder. If such contingencies are not visualised and such leakages are not plugged no taxation law can be effectively and satisfactorily implemented. In order to satisfactorily and effectively implement their provisions, penalties are generally provided for in all taxation laws without such a sanction there is a danger of tax evasion. Thus, provisions for levy and collection of penalties for contravening their requirements has become an integral part of such enactments and one of their purposes. Penalties under Income-tax statute have been as follows:

1) Penalty for failure to furnish information regarding securities etc.:

The analogous provision is to be found in sec.44-E of 1922 Act and under the present Act section 270 deals with the penalty. Income-tax officer is empowered to call for information regarding securities [sec.94(6) of 1961 Act] and the section enjoins that a penalty of Rs.500 will be imposed on a person who fails to comply with the requisition of the aforesaid section. This provision is deleted from 1 April 1989 [Direct Tax Laws (Amendment) Act 1987]. The provisions of this section are now embodied in sec. 272 A(2)(a).

2) Failure to furnish returns, comply with notices, concealment of income etc.

A penalty for failure to furnish return shall be minimum 2% of the tax for every month of continuance of such failure subject to maximum of aggregate 50% of the tax. [sec.271 (1)(a)]

A penalty for non compliance with a notice under section 142(1) or section 143(2) shall be 10% minimum and 50% (maximum) of tax that could have been avoided by such non compliance. [sec.271(1)(b)]

In case of concealment of income in addition to any tax payable a penalty of not less than 20% which shall not exceed one and a half times the amount of tax sought to be avoided could be imposed.

To bring home to the assessee the gravity of the offence of concealment of income penalty exceeding Rs.1000 was to be imposed by Inspecting Assistant commissioner [section 274(2)] from 1970-71, the jurisdiction of the Inspecting Assistant Commissioner will be on income concealed above Rs.25000. ; Penalty exceeding Rs.5000 has to be notified in the Gazette by the Central Government.
This graded scheme of penalties is very logical and rational. Under the old Act no minima were fixed and the maximum for all offences—irrespective of the magnitude of offence—was the same, viz. one and a half times or 150%.

The fixing of minima is also an answer to the Tribunal’s policy of appeasement. While holding that there was mens rea that the assessee had deliberately failed to file a return of his income or deliberately furnished in accurate particulars thereof, the Tribunal would sustain a penalty say of Rs.2000 only while the income concealed was Rs. One Lakh [Kotrika Venkata Swamy and Sons, 1971, 79 I.T.R. 499 SCJ] The assessee would not go in reference because the game was not worth the candle; and the department could not because the question of law was decided in its favour and the quantum was a question of fact. Thus, the penalty proceedings were reduced to a mockery of themselves.

The power given to Tribunal in the old Act to impose a penalty in the first instance has been withdrawn. This is for the reason that the Tribunal is the final court of Appeal on facts and if power of penalty were given, there would be no opportunity for the assessee to have that order considered by a higher court.

5.15.2. Changes in the quantum of penalty

Upto 1968 the minimum penalty for concealment was 20% of tax sought to be avoided and a maximum of 150% of such tax. With a view to making penalty provisions really deterrent against tax evasion the minimum penalty leviable has been made equal to the amount of the concealed income and the maximum amount of such penalty was raised to twice the amount of the concealed income. [Finance Act 1968 w.e.f. 1 April 1968] The present provision is that in case of concealment of income in addition to any tax payable by a person a sum shall not be less than, but which shall not exceed three times the amount of tax sought to be evaded.

3) Penalty for failure to keep, maintain or retain books of accounts, documents etc. :- Penalty on this count shall not be less than two thousand rupees but it may extend to one hundred thousand rupees. [sec. 271 A]

4) Penalty for failure to get accounts audited :- Penalty imposed may be equal to one half percent of total sales or gross receipts or one hundred thousands rupees which ever is less. [sec. 271 B (b)]

5) Penalty for failure to deduct tax at source :- If a person liable to deduct tax at source fails so to do he shall be liable to pay by way of penalty a sum equal to the amount of tax which he failed to deduct as aforesaid. [sec. 271 (c)]

6) Penalty for failure to comply with provisions of
section 269 [taking loan after 30.6.1984 otherwise than by an account payee cheque or account payee bank draft.] he shall be liable to pay by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted. [sec.271 (D)]

7) Penalty for failure to comply with the provisions of sec 269 I [Repayment of deposit by a company (including a banking company) cooperative society or firm] otherwise than by an account payee cheque or account payee bank draft: the deposit being for rupees (along with interest thereon) more than Rs.10000] penalty shall be to the tune of a sum equal to the amount of deposit so repaid.

8) Penalty for failure to answer questions sign statements, furnish information, return or statements allow inspection etc.

For the above acts of commissions and omissions penalty shall be an amount not less than five hundred rupees and may extend to ten thousand rupees for each such default or failure. [272 A]

For not compliance with a notice u/s 94 (6), failure to give notice of discontinuance of his business, profession etc. as required u/s 176 (3); failure to furnish in due time any of the returns, statements or particulars mentioned in sec.133 or sec.206 or sec.206A or Sec.206 B or Sec.285B or to disallow inspection of any register referred to in sec.134; failure to furnish the return of income u/s 139(4A) or failure to deliver copy of the declaration u/s 197A; failure to furnish a certificate required by sec.203; failure to deduct and pay tax u/s 226(2) penalty shall not be less than one hundred rupees but may extend to two hundred rupees for every day during the continuance of the failure.

9) False estimate of, or failure to pay advance tax:

For untrue statement of advance tax the penalty shall not be less than 10% but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year falls short of-

1) seventy five percent of assessed tax [Defined in sec.215(5)] or

2) the amount which would have been payable by way of advance tax if the assessee had furnished correct and complete statement in accordance with provisions of section 209 A (1).

For companies in (1) above seventy five per cent shall be substituted by eighty three and one-third per cent. [sec.273 ibid]

Power to reduce or waive penalty and interest vests in commissioner in certain cases. [sec.273 A]
5.16.1 Offences and Prosecution

Offences and Prosecutions have been dealt with in chapter XXII of the 1961 Act. Prosecutions launched under the provisions of this chapter would be tried by the magistrates in the criminal courts of the country and the procedure therefore would be governed by the provisions of Indian Penal Code where attracted as well as the rules in the code of criminal procedure.

Recent Modifications

Tax evasion and avoidance are as old as the tax laws themselves. But as the time rolled on black money i.e. unaccounted money is rampant. Tax evasion assumed such dimensions that no section of the community seemed to be quite immune from their virulent grip. This problem had thus assumed gigantic proportions. The malady had become endemic and had manifested itself where it was least expected. There, therefore, arose the need not only for greater vigilance but also drastic remedial measure. Below is given a bird's eye view of offences and prosecutions.

1) Contravention of order made under sub section 3 of section 132.

Section 132 deals with "search and seizure" Some articles are too unviable to remove them. They being heavy, bulky or precious. So sec.132(3) enjoins on the owner thereof a mandate not to remove, part with or otherwise deal with it.". The breach there of is made punishable [by Income-tax(Amendment) Act 1965]. The punishment may extend to two years rigorous imprisonment and also fine.[Section 275A of 1961 Act]

2) Failure to make payments or deliver returns or statements or allow inspection.

To implement provision of the Act different persons are required to deliver returns, statements viz.

i) Specific information on requisition u/s 133
ii) Grant of inspection of the registers of shareholders, debenture holders or mortagages of companies u/s 134.
iii) Certificate of tax deducted at source under Sec. 192 to 195
iv) Annual return of salaries paid u/s 206
v) Deduction of tax at source u/s 192 to 195 or arrears of tax realised from the salary of an employee u/s 226(2)
vi) Information regarding interest payment u/s 285
vii) Information regarding dividends declared and paid u/s 286

Failures at i to vii above have been declared punishable with fine which may extend to ten rupees for every day during which the default continues.

This provision (of sec.276) was omitted w.e.f. April 1976

If a person
i) fails to give the notice in accordance with Sec.178(1) (Liquidator in winding up of a company) or
ii) fails to set aside the amount as required by sub section 3 of sec. 178 or
iii) parts with any of the assets of the company or the properties in his hands in contravention of the provision of the aforesaid section, he shall be punishable with rigorous imprisonment for a term which may extend to two years. [Sec. 276 A ibid]

3) Failure to comply with provisions of sec.269 AB or Sec.269

These sections enjoin registration of certain transactions are required to be reduced to writing in the prescribed form and manner. Failure to comply with this was liable to be punished with rigorous imprisonment for two years and fine[276 AA]. This provision is deleted w.e.f. 1st October 1986 [by Finance ct 1986]

4) Failure to comply with the provisions of 269 UC,269 UE and 269 UL.
269 UC - [Restriction on transfer of immovable property]
269 UE - [Vesting of property in Central Government]
269 UL - [Restrictions on registration, etc. of documents in respect of transfer of immovable property]

Whosoever fails to comply with the aforesaid provisions shall be punishable with rigorous imprisonment for a term which may extend to two years and also be liable to fine [Sec.276 AB ibid]

5) Failure to pay the tax deducted at source.
If a person fails to the credit of the Central Government the tax deducted at source he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine [Sec.276 B ibid]

6) Failure to pay the tax collected at source. If a person fails to pay to the credit of the central Government, the tax collected by him as required u/s 206 A (person paying interest to residents without deduction of tax, to furnish prescribed return) shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.[Sec. 276 BB]

7) Wilful attempt to evade tax etc.
If the amount of tax sought to be evaded exceeds one lakh rupees he shall be punishable with minimum six months rigorous imprisonment which may extend to seven years and with fine. This may be over and above the punishment inflicted under any other provisions of the Income - tax statute. And in any other case the punishment shall be minimum three months which may extend to three
years rigorous imprisonment [Sec. 276 C Ibid]

8) Failure to furnish returns of income.
If the amount of tax which would have been evaded if the failure had not been discovered amounts to one lakh rupees he may be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine and in any other case with imprisonment of a term not less than three months and may extend to three years and with fine.[Section 276 CC]

To attract punishment wilful default was a precondition. The concept of wilful default is some deliberate or intentional failure to do what the taxpayers ought to have done, knowing that to omit to do so was wrong" [per Wilberforce J as he then was] in Wellington Vs. Reynolds, 40 TC 209, 215] Formerly mens rea had to be established to attract this section from 10th September 1986 mens rea is to be presumed and the accused has to prove absence of it.

9) Failure to produce accounts and documents.
One who fails to produce account and document in response to notice u/s 142(1) or (2A) shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine equal to a sum calculated at a rate which shall not be less than four rupees or more than ten rupees for every day during which the default continues, or with both [Sec.276 D]

10) False statement in verification etc.
If a person makes a statement in any verification under this Act or any rule made thereunder which is false or which is false or which knows it not to be true he shall be punishable:

With not less than six months rigorous imprisonment which may extend to seven years and with fine in case where tax evaded (if statement were accepted as true) exceeds one lakh rupees. In any other case the terms of rigorous imprison would not be less than three months which may extend to three years and with fine.[Section 277]

Ever since 1964 the law relating to prosecution for making false returns and statements has been made more stringent. Yet much was desired in this connection. As has been stated earlier the phenomenon of black money has ever been on increase since after close of second world war and it grew to be all pervading and rampant. There grew to be a dire need for government to pay immediate attention. The Government, therefore appointed a Direct Taxes Enquiry Committee under the chairmanship of Shri Wanchoo(retired Chief Justice of Supreme Court of India). The recommendations of Wanchoo committee as also the Law Commission of India towards a vigorous prosecution policy, which have concretised into chapter XXII. The commission advocated that in
the fight against tax evasion, monetary penalties are not enough. Many a calculating tax dodger finds it profitable proposition to carry on evading taxes over the years, if the only risk to which he is exposed is a monetary penalty in which he happens to be caught. The public in general also tends to lose faith and confidence in the tax administration once it knows that even when a tax evader is caught the administration lets him get away lightly after paying only a monetary penalty, when money is no longer a consideration for him if it serves his business interests. Unfortunately in the present social milieu such penalties carry no stigma either in these circumstances, the provisions for imposition of penalty fails to instill adequate fear of the law in the minds of tax evaders. Prospect of landing in jail, on the other hand, is a far more dreaded consequence - to operate in terrorem upon the erring taxpayers. Besides a conviction in a court of law is attended with several legal and social disqualifications as well. In order therefore, to make enforcement of tax laws really effective, it is but necessary for the department to evolve a vigorous prosecution policy and to pursue it unsparsingly[\text{Wanchoo Committee Report}]

Wanchoo committee X rayed section 277 of I.T. Act 1961 and found a very narrow sphere thereof. It compared the content of the section to the provisions of East African Income-tax (Management) Act, 1958. In the United States of America, tax offences committed with criminal intent are treated as felony under section 7201 of Internal Revenue Code which reads as under:

"Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to the other provisions of law, be guilty of a felony and, upon conviction thereof, shall be not more than $ 10000 or imprisoned for not more than 5 years or both, together with cost of prosecution".

The post Wanchoo committee offences and prosecution provisions of the Indian Income-tax statute bears the spirit of Wanchoo Committee recommendations. But enforcement of law should also, as the committee opined, be pursued unsparsingly or else the spirit of law shall remain only on the statute book.

11) Abatement of false return etc.

For abatement of false return etc. punishment shall be rigorous imprisonment for not less than six months which extend to seven years with fine if amount of tax, penalty interest etc. which would have been evaded, exceeds one lakh rupees in other cases it shall be minimum three months rigorous imprisonment which extends to three years and with fine.[Sec. 278]

12) Punishment for second and subsequent offences.

For conviction of an offence u/s 276 B, 276 (c)(1) or 276 C, or 276 CC or 276 DD, 276 E or Sec. 277 or 278 for every subsequent offence shall be punishable with rigorous imprisonment for a term
which shall not be less than six months may extend to seven years and with fine. [Sec. 278 A]

13) Offence by Companies.
In case of offences by company any director, manager, secretary and other officer shall be deemed to be guilty of that offence and shall be proceeded against if that officer was a consenting party or a person conniving at the offence. [Sec. 278]

Prosecution against any person for offences under Sec. 275 A, 276, 276 A, 276 B, 276 BB, 276 C, 276 CC, 276 D, Section 277 & 278 shall be at the instance of chief commissioner or commissioner. [Sec. 279]

Notwithstanding anything contained in code of criminal procedure, 1973 [2 of 1974] an offence punishable u/s 276 B, 276 C, 276 CC Section 277 or 278 shall be deemed to be non cognizable within the meaning of that Code [279 A]

Under the 1922 Act such prosecutions could be instituted with the sanction of Commissioner. When complicated cases of income-tax get involved into litigation it takes its own time for being resolved. This puts both assessees and Revenue in an embarrassing situation. Chelliah committee suggests establishment of a commission to bring about settlement between assessees and the Revenue. [Chelliah Committee Report 1992]

SWOT ANALYSIS OF INCOME-TAX ADMINISTRATION IN INDIA

Swot analysis is an analysis of strength, weaknesses opportunities and threats of the phenomenon in question. It is a technique of analysis in modern Management Science. Swot analysis of Indian Income-tax administration has been attempted below:

1) The Seligmanian canon of divorce from politics is completely observed in the I.T. administration in India. A full fledged department exists for I.T. administration.

2) The Income tax administration is entrusted with experts i.e. personnel well adept in their job.

3) The centralises control vests in the apex body viz. Central Board of Direct taxes. There is a band of combined staff that deal with cognate subject.

4) The powers and duties of the apex body are well carved out. They have a power of general guidance and issuance of directions. Yet they have no power to issue directions to A.O. as to how a particular case be decided.

5) As time rolled on there has been a clear definition of roles, duties and rights of the Departmental personnel.

6) In the 1961 Act creation of the cadre of Income-tax Inspectors has been a nice addition at the lower rung of administration.

7) The period reference of levy of tax has come to be well
defined in the present Act and its modification in the year 1987.

8) Addition of some additional functionaries has been made viz Tax-recovery officer and valuation officers.

9) The creation of a settlement commission in 1975 which came to be high powered commission. As the time rolled on amendments in its constitution, powers, delegation of powers, increase in number of members, creation of benches, principal benches at Delhi and establishment of regional Benches has rendered it a useful forum for entertaining applications and settling cases of tax evasion.

10) The uncertainty as to returns has been settled. Indian Income-tax history shows institution of a compulsory returns then removal of compulsory element and again introducing compulsory return. This zig-zag development of returns has been avoided now. There exists a well planned scheme of returns now.

11) By 1989 the period for filing of returns has been rationally founded.

12) Now it is made clear (since 1952) a return for loss could be returned.

13) A person in representative capacity can also file a return. This leads to avoid escapement of tax by non submission of returns.

14) Under the 1961 Act charitable institutions and political parties also are required to file return.

15) Arbitrary element in the preliminary period is avoided and a well founded scheme of assessment exists now.

16) Since 1987 more emphasis has been placed on voluntary compliance. This hastens the expeditious disposal of cases.

17) Since 1964 self assessment has been introduced. This discourages laxity on the part of persons who come forth suo moto to subject themselves to taxation.

18) Since 1987 it has been made mandatory for a person to pay before furnishing a return. This helps expedient payment of tax.

19) Provisional assessment has been abandoned from 1971 and officers have been instructed to take assessess at their words and take to regular assessment.

20) Modified Best Judgment Assessment exists which protects the interest of Revenue in case of non compliance by the assesses.

21) Back assessment is developed which has proved a useful device to curb tax evasion.

22) Provision of rectification of mistakes has been well developed compared to the old (1922) Act.

23) New administrative schemes have been chalked out and worked out to mitigate delay consequent upon tremendous increase of assessees and attendant volume of work-load.

24) T.D.S. (collection of tax at source) has been modified and extended farther to sources which were not covered in the past.
Introduction of advance tax in 1944 led to PAYE which has brought expediency in collection resulting in avoidance of tax evasion.

Improved and refined methods of collection and recovery.

Law relating to tax clearance certificate updated so as to minimise chances of loss of revenue.

Refund procedures refined legislative remedies to expedite refunds.

Provision of interest on delay refunds and revision of rates of interest thereon commensurate with changing times.

Developed methods and procedures in appeal.

Improvement in reference to High Court.

Appeal to High Court on points of law from Appellate Tribunal.

Provision of statement of case to Supreme Court in case of divergence of decisions among High Courts.

High Courts advisory role accepted.

More penalties provided for malfeasance and misfeasance on the part of the assesses.

Vigorous prosecution policy contemplated.

Weaknesses

1) Sound public relations ignored for along time in Income-tax administration in India.

2) Department is overburdened with work. This overburden is more patent with entrusting of other direct taxes viz. Wealth Tax, Gift tax (& Estate Duty before its elimination in 1985)

3) Personnel though not less efficient suffers from want of Training. The National Academy Nagpur of direct taxes can cater for the requirement only in part in view of the training needs of the Department.

4) Antagonistic attitude of the public. As is general with people in under developed countries individuals, businessmen and other categories of assessees are antagonistic to the Department. Relationship of a sort of mutual good faith could not be established between the department and the public.

5) The departmental strength at all levels of administration lags far behind compared to the growing workload because of increasing number of assesses.

6) The tax administrators do not also get the desired support from the legal and accounting profession.

7) Unfortunately the Income-tax Department appears to be managing its affairs by what might be dubbed the principal of management by crisis rather than management by objective [PAC (1975-76) Fifth Loksabha, 186th Report 1975 p.85]

8) Failure to build up statistical information service. Unfortunately this information system has not been built up in the Income-tax department despite repeated recommendations by commissions and committees and Public Accounts Committees.

9) The provided and published data also are deficient in many respects.
10) Frequent changes in the Income -tax Act make the already complex Act still more complex to administer.
12) The forms of return are not easily intelligible to the taxpayer. Simplification of these forms is desired.
13) Delay in filing of returns is a common phenomenon. Though the Present Act clearly lays down [Sec. 139(1)] last dates of submission of returns.
14) Forms of Return being printed in English comes in the way of ordinary taxpayer. Better if the translated version (with explanatory booklets) could be made available to the assessee.
15) Concomitant with delay in forms of returns is the automatic extension of assessment.
16) Over and above the problem of delay in returns incomplete and defective returns add fuel to the fire.
17) Frequent adjournments in the assessment proceedings. In this connection there is a game of hide and seek for attribution of liability (causes) to one or the other factor. Department blames asseesees and their representatives, while the asseesees and their representatives blame the unpreparedness of the officers responsible for adjournments.
18) Arrears of assessments pile up year after year.
19) Absence of priorities in scrutiny appears to be conspicuous by its absence in Indian tax administration. While completing the assessments the Assessing officer should scrutinise less in small income cases and more in revenue yielding cases.
20) In carving out new schemes for expediting assessment only a hybrid model has been constructed. The new schemes of assessments are neither based on American models nor on British models.
21) Summary assessment schemes are not immune from weaknesses. S.A.S. leads to neglect of work on the part of officers and tax evasion on the part of the asseesees.
22) S.A.S. could not remedy the ill of pendency of cases.
23) S.A.S. depresses the morale of the Income-tax personnel.
24) Frequent changes in jurisdiction, frequent transfers of officers, lack of adequate leave reserve staff, lack of adequately trained clerical assistance, absence of even ordinary facilities like the provision of a full time stenographer for each Income-tax (Assessing) officer, non supply of essential manuals and books, forms and stationery all these lead to delay in completion of assessment [Report of the Administrative Reforms Commission of Central Direct Taxes Administration (1969) P.1]
25) Problem of ever increasing arrears of taxes is a serious problem.
26) Functional system of allocation of work based on American pattern did not receive proper welcome in income tax circles [A.K.Jain some Aspects of Income-tax Administration in India, Uppal Publishing house New Delhi 1983 P.763]
27) There is a veil of secrecy to income tax matters in India. It is not worthy here that in Sweden official assessment lists and assessment records are public documents [world Tax series,
There is a tendency of overpitch assessment in India which leads to absence of good public relations.

Delay in Refunds are corollary of advance tax and TDS. but in India public opinion is that Government is keen and swift to collect taxes and slow to refund. This creates a problem of justice in taxation.

Lack of implementing penal provisions in seriousness leads to problem of tax evasion.

Discretionary powers to officers in this behalf leads to corruption.

Prosecution policy of offences is not up to the level contemplated by law. Income tax personnel seem to be carried by the social status of the defaulting assessees.

High Courts are flooded by appeals resulting in pendency of appeals.

Opportunities

1) The personnel in the department is no less efficient. Given the opportunities they can stand to the occasion. Vast talent, high administrative ability, and capacity to do full justice between the state and the citizen are all there in the department [N.A.Palkhivala, 'The Highest Taxed Nation, 1966 P.64]

2) Of late Government policy is to improve the administrative position of the department. Govt. is awake to the need of improvement in income tax administration.

3) From the seventies Government have been endeavouring for rationalization and simplification of Income-tax statute and tax procedure.

4) Statutory provisions are being made to base the format, submission of returns ion time and Government are keen to bring about simplification in this connection.

5) Government seem to mean business in the matter of help build the department 'public relations'

6) There has been efforts to reorganize the department not only in nomenclature of the personnel but to reorganize it in the real sense of the terms.

7) In the post independence period Government have appointed various commissions and committees and invited suggestions for improving the working of the department.

8) From 1967 onwards attempts have been made to base the assessment work on the objective basis. New schemes have been launched. With the experience of their working chances are there to bring out improvement in the assessment work.

9) Government have shown their keenness about the justice element in taxation. Recently legislative measures have been adopted to hasten and expedite the refunds to the assesse paying amounts in excess of the required amount of tax.

10) Recent legislation has provided time limits for refund of taxes.
11) Provision of provisional assessments have been done away with thereby removing the element of provisionality in assessment.
12) Back assessment provisions have been improved to check tax evasions.
13) Recent legislative measures about TDS and advance tax have improved the position of tax collection.
14) Provision and improvement in the functionaries of Tax Recovery officer has facilitated the collection and recovery programme.
15) Establishment of Settlement Commission has wide opened the vistas of curbing tax evasion.
16) Appellate provisions have been rationalized. Under the 1922 Act Appellate Tribunal used to be final. Advisory role of High Court has been focussed upon under the present Act.
17) Statement of case from Tribunal to Supreme Court has been provided for in certain cases. Access to highest legal Tribunal in land has been made open in case of divergent opinions by varying High Courts on the issue.
18) Penial provisions have been made stringent.
19) Vigorous prosecution policy recommended by Wanchoo Committee has been given statutory status in the later period.

**Threats**

1) Discretionary powers to authorities are likely to be abused and shall be conducive to corruption.
2) New schemes for expediting the assessments is likely to make departmental personnel lethargic and negligent to their work.
3) Scrutiny method of assessment in some significant cases and in other cases taking the assesses at their words is replete with danger of detriment to revenue.
4) Plethora of amendments in the name of rationalization and simplification of procedures are themselves likely to make procedure cumbersome and complex.
5) Advance tax which was resorted to as aftermath of war time emergency measure has come to stay for good in Indian Income-tax system. This mars the principle of taxation of income of the previous year in the assessment year. Dr. V.K.R.V. Rao as long back as 1929 had charged income taxation ion India devoid of any principles such instances go to prove the allegation of the above kind.
6) In their enthusiasm Government are likely to hasten to take certain steps in hurry. Steps in hurry never serves the end. Certain provisions of Direct taxes (Amendment 1987) pertaining to firms have ultimately turned to abortive ones.
7) Back assessments violate certain basic jurisprudential canons regarding taxation in relation to laps of time.
8) The induction of a class of new functionaries viz. Tax Recovery officer is likely to come in clash with Assessing officers. Such a clash has come to be a truism and remedy may prove worse than the malady itself.
9) Reference to High Court (its advisory role) is likely to flood the already crowded High Courts.
10) Statement of case to Supreme Court from Appellate Tribunal is likely to overburden the Highest Tribunal of the land.

11) If vigorous prosecution policy be not followed all good intentions are likely to remain confined to the statute book only.

The SWOT ANALYSIS suggests number of clues for improvement in Income Tax Administration. Tax Reforms Committee (Chelliah Committee) along with other innovative steps suggested schemata of Presumptive assessment. Presumptive assessment scheme did exist in the early thirties. It would be but essential to examine the new schemata of presumptive assessment which has been dwelt upon in the Appendix III.
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Assumption that both the firms are registered firms and 1991-92 rate structure is used for the calculations.

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