CHAPTER 9

FINDINGS AND SUGGESTIONS FOR REFORMS
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Upto now concepts pertaining to Income taxation, and the basic issues raised in the initial stages of research and further developed into various dimensions viz Assessees Dimension, Administrative Dimension, Government Policy Dimension, Comity of Nations Dimension and Revenue Dimension have been dealt with in details. During the course of discussion certain relevant issues were appraised and at times suggestions for improvement were made. In this chapter an attempt has been made to depict a consolidated picture of Indian Income Taxation in the context of articulated dimensions and the chapter concludes with certain model suggestions for improvement. Chapterwise findings are as follows:

Chapter 1 Concepts of Income-taxation unfolded

(i) Income taxation has intrinsic superiority over the other taxes in that its incidence is readily perceptible.

(ii) Now, it is agreed on all hands that "Income-Tax" is a direct tax. In the early days of the levy in U.S.A in the constitutional domain there was reluctance to outright treat it as a direct tax in as much its constitutional connotations were concerned. But this view yielded place for the generally accepted view and after 1913 in U.S.A in constitutional domain also income tax came to be accepted as a "direct tax".

(iii) It is axiomatic in public finance literature that Income tax cannot be shifted. But Prof. Taylor opted to delve deeper into the validity of this axiom and examined it into depth. But ultimately he too came to a conclusion that shiftability of income tax is a myth rather than a reality.

(iv) Examination of concept of income shows that etymologically income connotes coming in, profits or revenue. The simplicity is only a surface simplicity. Income of an individual is the total money value of the services received by him from all sources including his own activity. This has been Irving Fisher's concept of income. But this, as yet, does not represent communis opinio. Prof. Seligman treats income as inflow of satisfactions from economic goods. There is economic concept of income which endorses the view that income connotes the net accretion to one's economic power between two points of time. Prof. Fisher and Niclos Kaldor view income as "flow of services". Some view income from recurrent consumable receipts concept standpoint. This concept implies the manifestation of income in a change in the person's net wealth during the period. Income has accounting perspective also, which is no less important for it is only accounting schemata which gives the computational manifestation
of the tax base-income. Economic concept is value based whereas accounting concept has transactional orientation. After all legal concept of income is important because ultimately the taxpayer has to succumb to this concept. Realisation is a prerequisite of income in legal concept. This view originated in U.S.A. But there has been a gradual transformation from realisation to accrual in this concept and has been accepted these days. Concept of taxable income in India is relevant for the present study. Indian approach in the initial phase was scheduler. There were four schedules of taxable income under the first Indian Income Tax Act 1860. The present concept of income as embodied in Income tax statute is that it is divided into various sources of income viz income from salary, income from house property, income from business profession, vocation; income from capital gains and income from other sources. Before 1987 the second source (after salary) was income from interest on securities, which after 1987 has been amalgamated with income from business and from other sources.

(v) Income taxation in its practical implementation must be based on certain canons of taxation viz canon of ability, canon of equity, canon of cost, canon of convenience, canon of knowledge to tax payers etc. But the latter ones, in the ultimate analysis, submerge in the former two. Hence stress in this study, has been placed on the discussion of the first two only. Ability to pay canon is a celebrated canon of taxation, more so in the taxation of income. Income taxation must be in keeping with the principle of equity. Treatment alike of the likes in the similar situations or differential treatment of the unlikes may lead to observance of canon of equity in income taxation. Principle of progressivity in income taxation is compatible with doctrine of ability to pay. Cost benefit theory has lost its heyday in taxation matters. Ability to pay principle has come to be a foundational premise in the taxation of income.

(vi) Pertinent problem is to evaluate the place of income taxation. On the face of it, it is clear that income tax enjoys paramountcy in the fiscal framework of the advanced economies. But recently income tax is gaining ground in the developing economies also on account of its intrinsic redistributive justice element. In nutshell, income tax has come to occupy important place in all the economies developed or developing.

(vii) Any study of income tax shall but be imperfect without considering effects of income tax. In economic literature one comes across two words 'incidence' and 'effect'. Edwin Cannon and Duncan Black disapprove of the concept of difference between the two. Effects of income tax are relevant in relation to incentive to work, supply of factor prices, income redistribution, consumption, savings, production and investment. Psychological effects of income taxation are also no less significant.

So far as effect of income tax on work is concerned income tax exerts both the effects viz substitution effect and income
The substitution effect manifests itself in people's opting for more leisure because income tax reduces the price of leisure. But the tax also reduces the net income of the tax payer and this operates in such a way as to reduce leisure and work more.

The effect of income tax on supply of factor services shall depend upon the nature of the factor supply schedules. If the factor supply schedule is perfectly inelastic the quantity supplied will not be influenced by the imposition of the income tax and vice versa. Effect of income tax on labour shall be situational. Some times it may act as fillip to work more (to maintain standard of living) at times it may provide a disincentive to work. What exactly would be the effect on labour depends on his situation. Supply of capital will be cut down by steeply progressive rates of income-tax.

Income tax reduces the income of business units and thus reduces demand for factor services. Since income tax affects labour and supply of labour it has effect on revenue allocation and through that it may influence changes in relative outputs.

So far as redistributive effect of income tax is concerned a highly progressive income tax has the effect of lopping off the top incomes.

Excess doses of progressivity has an adverse effect on savings and investment and through that on production.

Psychological effects of income tax are difficult to predict because of the subjectivities involved. But income tax does exert psychological effect. Predictions of people as to rates of income tax may either enthuse them towards buoyancy or may have a dampening effect on them.

With the globalisation of trade and commerce income tax cannot be immune from international ramifications. Since income tax is common as a fiscal tool in all the countries and 'residence' and 'accrual' of income are widely recognised the necessary attendant evil of globalisation of trade and commerce is double taxation of income tax in the international field. The remedy for this is quite beyond the reach of any one single nation. Hence the growing significance of action by Comity of nations in the field of income tax in international domain.

Chapter 2 Research Methodology

(i) It is clear that recently importance of income taxation is growing in both the developed and the developing economies. Hence income taxation constitutes a fertile area for research.

(ii) Approaches for study of income taxation could be: Economist's approach of Public Finance being a branch of Economics it can be said to be Public Finance Approach also. There can be
legalistic approach for the study of income taxation which studies the subject in jurisprudential gamut or weigh income tax as a statute in the statute making area. Income tax could be studied from accounting angle e.g. income tax could be studied from the depreciation accounting angle. Or the scholar may study schemata of income taxation vis a vis inflation accounting. There could be an approach of the professionals seeking to encountenence the day today problems in the domain of income taxation. This can be branded to be the problem solving approach. There could again be an amalgam of all these approaches from which emerges a combined approach viz integrated approach. This may be called as policy approach also. The present study purports to be based on integrated approach or so to say the Policy Approach.

(iii) Before setting out for the actual research work by way of an exploratory survey review of relevant literature; both published an unpublished was taken. The review brought out that the previous studies were at best partial. They were partial in the sense they covered a few facets or the selected phases of development of taxation of income in India. An integrated study both from totality of approach and a continuous stream of developments was a desideratum. The present study is an humble attempt to fill the void. Here lies the rationale of the research project and the raison de’re for the study of income taxation from its very inception todate.

(iv) The study is entirely based on secondary data. Materials for the present work has been procured by the thorough scrutiny of Income tax statutes, precedents, learned commentaries and panel reports on the subject. All India Income tax statistics (Annuals) have also been made us of for the study. After examining the various alternatives content analysis method was used for the study.

(v) In the initial stage of the study certain issues were raised vis a vis income taxation viz. the past roots of income taxation, the "levy on whom" aspect, "levy how" (i.e. through what machinery) "levy on what lines", "levy in the international perspective" and "ultimately the end object of the levy" and these issues were developed and concretised in the chapters "Indian Income taxation in "Assessee Dimension, "Administrative dimension Retrospects", "Government Policy Dimension", "Comity of Nations Dimension" and ultimately the "Revenue Dimension". Thus the research report has been organised in nine chapters including the one in hand.

(vi) The hypothesis was developed as follows: "Income taxation changes with the outlook and philosophies of the Governments".

To analyse the changes in the dimensions concretised was the principal objective of the study.

Chapter 3 : Indian Income Taxation in Retrospects.
(i) A probe taken into ancient history brought out that the institution of state came to be founded in Vedic and Upanishad period and came to be well-founded in Epic period.

(ii) There came into existence the fiscal administration in the epic period as the institution of state got itself stabilized. There was well-knit fiscal administration in Mauryan and Gupta dynasties. This fiscal tool of Income taxation existed in India in Mauryan period and the contemporary Athens. However, the Mauryan period Income taxation was of limited applicability e.g. it was confined to prostitutes, dancers, actors musicians etc. There is reason to believe that the fiscal weapon of Income taxation in those times might have been used as a punitive measure.

(iii) In the Muslim period since the Muslim rulers were invaders rather than statesmen there could not be built a sound fiscal system. But taxation became an important source by then. There is a trace of direct tax in this period. The only direct tax known in this period was "Jizia". Though a tinge of egalitarianism could be attached therewith yet it is agreed on all hands that at best it had its theocratic orientation.

(iv) There was advent of modern commercialism in India only in British period. A theory has been developed that income tax thrives only on the ground of development of modern commercialism in economic field and development of sound democracies in political field. The probe into ancient past, but for the existence of income taxation in Mauryan period (with a very limited applicability) only proves this theory.

(v) As to origin of income taxation a theory is advanced that income taxation owes its origin in the financial emergency resultant to war or internal rebel. A brief survey of initial development of income taxation on world scenario only confirms the theory. In India also Income taxation was introduced with a view to tiding over the financial emergency caused by First War of Indian Independence in 1857. Income tax in India was first introduced in the year 1860.

(vi) The Indian history of Income taxation has traversed a path which could be studied in well-knit phases of developments. In 1860 Income tax was introduced as an adhoc financial measure. To begin with it was to continue for a period of five years. The levy was imposed on all incomes including agricultural incomes above Rs.200 per annum. It was a period of trial and error. Hence this period called a period of Experimentation in the history of Indian Income Taxation by Dr. V.K.R.V.Rao.

(vii) After 1865 to 1873 there was a hide and seek game of License Taxes followed by certificate taxes followed by income tax in turn 1873 to 1886 was a period of zigzag development of Income taxation in India. For the first time income tax was based on stable footing in the year 1886. This Act continued for the period of nearly three decades till the 1916 Act was enacted.
Of course major amendment was made in the year 1903. In the 1886 Act agricultural income was kept beyond the purview of income taxation which tendency continued to date (barring an exception of partial integration of agricultural income with that of other non-agricultural incomes.) Despite the flaws in the system during this period a stable footing was undoubtedly given to Indian Income taxation during this period. Dr. Rao therefore prefers to brand this period as a Period of Integration in the history of Indian Income Taxation.

(viii) Income tax, as is indicated in the history, blossoms to fullness on the background of war. The first World War provided this opportunity to Indian Income Taxation. When other advanced countries were groping into uncertainty to look for fiscal weapon of Income taxation to finance their war efforts India had an experience of nearly more than half a century in the Income tax domain. War had its effects on Income tax system in India. Doses of progressivity along with raising exemption limit developed in this period. Super tax was introduced in the year 1917 and refinements were given to it with the amendment thereof in the year 1920. The Income tax Act 1918 had made some attempts to give some foundations of modernity to Indian Income Taxation. After Montague Chelmsford reforms there developed a scheme of federal finance in this country and Income Taxation became a central subject thenceforth. The 1922 Income Tax Act was the first attempt to base income taxation in India on modern lines. Up to this period the Income tax administration was entrusted with the provincial governments. For the first time the 1922 Act visualized and provided for a distinct administrative machinery for the execution of Income tax statute. With the enactment of C.B.R. Act (1924) on lines with Board of Inland Revenue in England there was culmination of distinct Board to supervise and guide the Income tax administration in India. Thus this period was characterised by passing of enactments to give effect to plausible system of income taxation in India. Dr. Rao, therefore brands it as period of legislative consolidation.

(ix) After 1924 to 1939 efforts were made to improve income tax administration. The 1924-25 Taxation Enquiry Committee provided food for thought for lines of improvement during this period. Subsequent legislation passed since 1924 onwards created a solid income tax system strong and capable enough to see through the strain of war finance that befell in the year 1939. This may be branded as preparatory to second World War period.

(x) Second World War broke out in the year 1939. India was dragged into it though it knocked at the door of India in the late phase of the war when Burma was attacked by Japan in the year 1942. Though actual war broke out in 1939 yet British Government started dragging India into it since 1937 with the Chatfield proposals. Income taxation was made to serve as a weapon of war finance. Consequently it witnessed advent of E.P.T., B.P.T. and C.G. This did not serve any useful national purpose on the other hand it put great economic onus on the Indian economy. The only
advantage (if at all it could be called one) was that income tax developed as a mature fiscal weapon so much so that it occupied a place of honour in Indian fiscal system. Contribution of direct taxation (virtually amounting to Income Tax) in the contemporary times was 50.55% and India, at least in this respect ranked with advanced economies like U.K., U.S.A. and Canada. This may be called a period of war finance.

(xi) 1946-47 A Period of Transition.

This is a transitionary period. In this period preparations for transfer of power were in the offing. But from income taxation point of view this was a period of facing the music of afterwar effects. Government then visualized two contradictory situations. They anticipated both after war deflation and after war inflation. Their income tax measures were targeted at fighting against the twin contingent problematic situations. The budget proposals of 1946 reflect this tendency of the Government of India. This may be called a preparatory one for independence period or a period of transition.

(xii) 1947-51 Preparatory period.

Indian independence dawned in the year 1947. Though an occasion of unprecedented jubilations in Indian history it was the darkest blot point so far as national scenario was concerned. Independence, in its train brought many calamities and problems concomitant with partition. Necessary changes took place in Indian Income Taxation to overcome such problems. It was a period of preparation of economic planning in the years to come. Income tax was burdened with financing the short term development plans and to provide funds for part of the phases of long term development programmes designed during this period. In nutshell income tax was harnessed as an important source of revenue to finance the problems of times.

(xiii) 1951-1958 Period of Search for viable tax structure.

In 1951 economic planning was inaugurated in the country. This changed the whole outlook of Government of India towards Income Taxation. It was looked upon as a fiscal weapon to subserve the ends of economic development. But this did not materialise in the air. Overhauling of whole structure of taxation was a desideratum. This phase changed the shape of scenario of Indian budgetary system. Two important panels viz. Taxation Enquiry Commission (1953-54) and Prof. Nicolaus Kaldor provided the requisite food for thought for the lines on which the Indian taxation structure was developed. 1951-58 constituted a period of preparation for search of viable structure of taxation in general and income taxation in particular.

Upto 1961 on the horizons of Indian Income taxation the 1922 Act enjoyed a continuous life of four decades (albeit with numerous amendments thereto). In 1961 the present income tax Act was enacted, presumably with the contention of simplification of Income tax statute. This Act intended to do away with the bottlenecks, intricacies and obscurities in the old statute. It was an attempt at thorough overhauling of the income tax structure in India. An all out attempt was made to reorient income tax administration for this purpose the C.B.R. Act 1924 was replaced by C.B.R. Act 1963. In 1961 Act income tax authorities were redefined and redesigned so as to make income tax administration simple and rational. Direct Taxation Administration Enquiry Committee (D.T.A.E.C.) (1958-59) headed by Mahavir Tyagi were appointed. D.T.A.E.C., 1961 Income Tax Act, C.B.R. Act 1963 were the landmark steps due to which this period stands out as a period of precursory to simplification and rationalisation of Indian Income Taxation.

(xv) 1967-1985 Period of rationalization.

Basic purpose of 1961 Act was simplification of Indian Income Tax structure but the statute did not serve the purpose. Compared to 1922 Act it became more and more obscure and Income tax procedures more cumbersome. A need was felt to simplify the Act and to rationalize income taxation. So panels like Administrative Reforms Commission (ARC) (1968), Wanchu Committee (1971), Raj Committee (1972) Choksi Committee (1977), Economic Administration Reforms Commission (headed by L.K. Jha) 1981-83 etc. contributed to the Government's efforts to rationalize the Indian Income Tax system.

(xvi) Era of LTFP Long Term Fiscal Policy (1987)

Despite efforts of Government's hectic attempts through the best brains in the country (as aforesaid) rationalization attempt did not prove to be a success. The reason for this could be the half hearted policy of the government and short term view of the panels entrusted with the job of suggesting schemata for rationalization. It was therefore deemed fit to evolve a long term fiscal policy in 1985.

This policy envisages the stability of income tax structure at least for a period of five years. Accordingly during 1985-90 Amending Acts viz that of 1987, 1990 were enacted which aimed at implementation of LTFP visualization on the legislative side. Policy is good but as Prof. Brahmanand said it was thrown aboard. This period is branded as period of Long Term Fiscal Policy.

(xvii) Though the nomenclature has not explicitly been suggested in the study the post 1991 period is a period of New Liberal Economic Policy, which, it is anticipated may serve to liberalize the rigidities in Income Taxation system of India.
Chapter 4 ASSESSEE DIMENSION

(i) No levy can exist in vacuum. Tax unit comes to be an important component of scheme of Indian Taxation.

(ii) Tax unit can be individual or institutional. Institutional tax unit may assume the shape of from Household to Corporation. Despite the fact of controversy of Individual Vs. Household Indian tax unit opts for both the tax units.

On the Indian scenario this controversy has been set at rest in view of the enumeration of assesses on following lines.

a) Individual,
b) H.U.F. (Hindu Undivided Family),
c) Partnership Firms,
d) Companies,
e) Association of Persons (A.O.P.),
f) Any other juridical person.

(iii) In Indian Income tax system taxation of individuals any scheme of differentiation was wanting which was evolved in the year 1946 and it came to an end in the year 1969.

(iv) Personal allowances were conspicuous by their absence upto the thirties in the taxation of individuals. Scheme of personal allowances developed upto seventies. Deductions to individual assesses developed commensurate with socio economic policy of the Government of India.

(v) Sometimes compared to other types of assesses the balance of favoured treatment appears to hinge to individual assesses. This discrimination in favour of individual assesses is only justiciable with some scheme of aggregation and clubbing of incomes. There has been development of this scheme in Indian taxation (through the provisions of sections 64 and 65). The recent Finance Act 1992 provided for clubbing of children's income with that of their parents of course with some exceptions.

(vi) Hindu Undivided Family (H.U.F.) is an Institution peculiar to Hindus.

(vii) Despite some demerits (for curing which model suggestions are made in the concluding part of this chapter) this ancient institution retains its viability even today.

(viii) Firms in general law and in English common law are different from those in income tax statute. Income tax statute evolved its own concept distinct from one implied in the above two schemes.

(ix) There is no reason for classification and distinct treatment of registered and unregistered firms.
Dr. Rao examined in the early thirties scheme of taxation of firms and established this thesis that Indian law of taxation of firms violates the doctrine of ability to pay. The model reforms under this study seek to suggest ameliorative measures in this connection.

Upto 1959, as opined by Prof. Kaldor there was a mess of company taxation. There was a change in the schemata of company taxation in the year 1960.

There are two theories of company taxation viz.

(a) Company has no distinct entity of its own. It is rather an agent of shareholders.

(b) Privilege theory of company taxation. Here company is treated as a distinct entity of taxation in itself. It is a fee for special corporate existence and privileges.

Britain and South Africa are the strong adherents of the first theory while U.S.A. and Canada are the strong followers of the second theory. Whereas Japan seems to strike the balance between the two. As Prof. Kaldor pointed "the unforeseen mess" of company taxation is evident in India. From 1959 onwards attempts were made to improve and correct the things. The changes in company taxation in subsequent period changed the British orientation to U.S.A. orientation. But it did not fully tread the American path. The changes in the company taxation in India have treaded the path somewhere on Japanese model in the early thirties.

Chapter 5 ADMINISTRATIVE DIMENSION

i) Proper administration is a key to success of any tax system. Need of efficacious income tax administration can hardly be over emphasised.

ii) Prof. Seligman's doctrine of an ideal income tax administration involves the following basic tenets:-

   a) Divorce from politics.
   b) Entrusting administration to experts.
   c) Centralised control and
   d) Combined staff that deal with cognate subjects.

iii) Seligman's doctrinairal barometer may better be devised to test the conformity of Indian Income tax administration to the ideals of income tax administration. Testing it on the aforesaid criterion it is found:

iv) Upto enactment of 1922 the income tax administration was entrusted to provincial Revenue officials (barring the exception of city of Calcutta). The income tax administration in this phase was inefficious, arbitrary and corrupt. For the first
time in 1922 the income tax administration was entrusted to Central Government.

v) Under the 1924 Act a Central Board of Revenue was created for the centralised control and guidance of the income tax administration. The 1922 Act based the Indian income taxation on scientific foundations.

vi) Amendments of far reaching consequences were made to the 1922 Act in 1939 amendment Act which sought to ameliorate Indian Income Tax Administration.

vii) Returns were compulsory in the initial phases of Indian Income Taxation. Later on the element of compulsion was dropped. Under the 1922 Act notice for returns was to be published in the press. This fallacy was abolished in the present Act and subsequently rationalised.

viii) Back assessments and provisional assessments were provided for in the Indian Income Tax Administration. From 1968 onwards provisions pertaining to provisional assessments remained a dead letter. Now provisional assessment does not exist. Back assessment provisions are provided for in the Indian Income Taxation. However, the recent tendency is to reduce the period of back assessments. This is not based on any juristic doctrinal ground. But it is in keeping with the modern trend of quick disposal of cases. Thus it is based on the ground of expediency.

ix) Advance tax was initiated during the second world war period which continues to date albeit in modified forms.

x) Scheme of refund has been updated and has been changed in the interest of refundees.

xi) A settlement commission has been created in 1976 so as to expedite the cases of tax evasion.

xii) Income tax administration is meant for levy and collection of income taxes. In a way they represent the revenue i.e. one side only. Income tax authorities are entrusted with executive and some authorities are entrusted with quasi judicial powers. Income tax authorities were well carved out in the 1922 Act, articulated in the 1961 Act refined in the subsequent years and after 1987 there was redefinition and change of nomenclature in the authorities. Creation of Income Tax Inspectors was a welcome addition in the post 1950 period. Recovery procedures were refined and separate functionaries of T.R.Os. and valuation officer were created of late in the present Act.

xiii) Despite the necessary changes and refinements in the Income tax authorities and personnel, errors of commission and omissions are bound to remain. And redressal of grievances is a necessary part of income tax administration. Ever since 1922 Act provisions for appellate authorities do exist and refinements
thereto have been being added per requirements. In recent period an attempt has been made to rationalize provisions pertaining to Appeals, Revision, Reference etc.

xiv) Penalty and prosecution provisions have been made more stringent.

Despite the above changes much is desired in respect of optimal administration. Panels that investigated into Indian Income taxation came to a conclusion that income taxation is administered not by principles of management by objectives but by management by crisis. Here are indications of failure of Indian Income Tax Administration. Only stringent penal provisions in the statute book would not do. The stringent provisions must be implemented in the spirit of the letter of law. This is wanting in Indian Income Tax Administration. Piling up of arrears of assessment and tax collection stand testimony to the above allegation. Thus administrative lacunae lead to the loss of revenue to the exchequer and evil tendencies of tax evasion thrive only on the background of poor and inefficacious Income Tax Administration.

xv) SWOT analysis attempted in the study brings out strength, weaknesses, opportunities and threats of the Indian Income Tax Administration and provides clues for modifications in the three main branches of the Indian Income Tax System viz.

1) Assessment,
2) Collection &
3) Judiciary.

CHAPTER 6 : GOVERNMENT POLICY DIMENSION.

i) Tax structure in any country originates from Government Policy.

ii) Underdeveloped countries face a dilemma in that direct taxes are but secondary in their tax structures.

iii) In underdeveloped countries these economies have the twin objectives ( of Income Taxation Policy) of generation of revenue and redistributive justice.

iv) In the first phase of development of Income taxation the Government Policy was shaky, myopic, volatile and uncertain. It was in the nature of post mortem of events rather than a wellknit policy. It was designed at the whim of the high ranking officials rather than objectivities of the situations. The only justification for such mess of things was that after all it was a pioneering experiment of income taxation in a very backward economy.
v) In the latter two periods also i.e. period of integration (1886 to 1916) and the period of legislative consolidation the policy lacked any elements to subserve India's national interest.

vi) The only credit that deserves be given to "Government Policy" during these two periods is that the income tax system has been erected on stable foundations during these phases of Government policy.

vii) During the first world war period super tax was introduced. This had an adverse bearing on the economic development of the country. Revenue generation for maintenance purpose thus was the "be all and end all" of the Government policy upto 30s of the 20th century.

viii) 1924 onwards to 1939 the policy orientations were amelioration of income tax administration, 1939 Act was a milestone in this connection which sought to do away with many a malady in the Indian income tax administration.

ix) The orientations of the Government policy during the second world war period were predominantly to be found in assigning income taxation a role of device for war finance. Indian National interests were relegated to the background. Imposition of surcharges, introduction of Excess Profits Tax, Capital Gains Tax and later on Business Profits Tax etc. though they served the designs of the British Government and better served the interests of British Imperialism the policy served to inject inflationary tendency of which India could not break the shell of even to this day. Seeds of the malady of inflation were sown during the second World War Income Taxation Policy.

x) After the war was over the Government policy had the encounter with the situation and problems that posed themselves as an aftermath of war. The policy orientation of the Government Policy was erroneous in its very focus. Government policy had its focus on mitigating post war deflation whereas the crux of the problem was to mitigate the post war inflation. Policy perceptions and the concomitant focus itself was misplaced during the Transitional period Government Policy towards income taxation.

xi) After India won freedom in 1947 the policy framers were filled with enthusiasm to materialise their dreams of emancipation of Indian polity through economic emancipation. This overenthusiasm with certain important functionaries the glaring example whereof has been that of Mr. Liyakat Ali Khan who was laid astray in the design of his financial policies in general and income taxation policy in particular. His enthusiasm for Quaranic doctrines of egalitarianism made him turn back to the economic realities. His policy focus was to mulct the income tax of the rich so as to subserve his egalitarian ideas of income tax policy. Moreover funds were required to be raised through the device of income tax towards the satisfaction of the problems concomitant with the partition of the country. The policy between 1947-1951
was policy of economic rejuvenation and preparing the background for the economic planning that was to be soon taken on the national economic policy agenda.

xii) During the period 1951-58 the principal concern of the Government policy was revenue generation for financing the economic plans. For this purpose the Government had in their contemplation the restructuring of the tax system. Government learnt a lesson from the evils of overenthusiasm of the transitional and preparatory to economic planning phase. This cautious attitude reflected in the 1952-53 budget when status quo was maintained as those on lines with the 1951-52 budget. The Government policy was not to rush to initiate changes abruptly but they were to consolidate their policy after seeking counsel of Panels like T.E.C. and Prof. Kaldor’s recommendations. Thus the government policy during this period focussed its attention on search for a viable income tax structure.

xiii) During the period 1958-67 the Government were to embark upon the programme of restructuring the income tax structure for this purpose the Direct Taxes Panel headed by Mahavir Tyagi (1958) were appointed mending "the mess of company taxation" as pointed out by Prof. Kaldor was put into effect and steps were taken to reorient corporate taxation and in the year 1961 the old statute (1922 Act) was replaced by the new statute (i.e. 1961) Act and rules thereunder were framed in the year 1962 and CBR Act was enacted in the year 1963. Super tax was integrated with the General income tax. All these policy steps were indicative of the fact that this period was a precursory of the campaign of rationalization that the Government were to embark upon in the post 1967 period. Thus the policy orientation of this period was to prepare a ground for rationalization of income taxation in India.

xiv) The period 1967 to 1985 was characterised by the income taxation policy totally devoted to the rationalization of income taxation. With the development of economic planning and the changing economic scenario changes were made in income taxation. The changes made the income tax statute obscure and unintelligible and income tax procedures cumbersome. The income tax policy then was targeted at rationalization. This campaign was supported by guidelines suggested by various panels in this connection.

But unfortunately all these attempts have remained half hearted and the above panels had viewed the changes from short term view.

xv) 1985 onwards LTTP.

Policy after 1985 attempted to fill the void. The then Finance Minister Mr. V. P. Singh stressed on the need of a long term fiscal policy. In income tax domain this policy contemplated.

i) No change in the rates of income taxation at least for the
period of five years.

ii) Rationalization of income tax system and simplification of income tax procedures.

iii) Working out a new code of direct taxation as a whole in place of piecemeal simplification of Income Tax Structure by amendments to the income tax statute.

iv) Establishment of an Economic Court,

v) Lifting the veil of secrecy and developing an information service relating to income taxation.

vi) Making changes predictable so as to avoid the element of mystery in the changes in the income tax system.

In the present study policy appraisal at each phase of policy along with the overall appraisal of the policy has been made and some caveats for the policy makers have been suggested.

xv) Though no specific articulations have as yet been worked out in the New Liberal Economic Policy it is contemplated that the policy should have focus on liberalisation element. It should advance a frontal attack on the rigidities of the present income taxation system and should usher in an era of open and liberal income taxation policy.

CHAPTER 7: COMITY OF NATIONS DIMENSION

i) With the development of trade and commerce in international field international interaction in income taxation is but inevitable.

ii) Recently all the nations have widely accepted income tax as a component of their fiscal policy.

iii) All nations have generally adopted the residence and accrual basis of income taxation.

iv) This leads to double taxation of incomes in income taxation in international domain.

v) Double taxation comes to be stumbling block in the way of smooth interaction in international trade and commerce.

vi) This problem was first articulated by Seligman Committee under the aegies of the League of Nations.

vii) Dr. Rao criticised the Seligman Committee on the count of its intrinsic weakness of approach and remedies suggested.

viii) Coming to Indian Scenario the findings are that :-
in the pre independence period India’s destiny was tied with Britain alone.

ix) In trade intercourse with other countries she was put to a disadvantageous situation. It is noteworthy that the position of other dominions viz. that of New Zealand was different. New Zealand had provided for certain precautions against international double taxation of her nationals.

But destined as she was, she could not transgress this tie with U.K. even to the detriment of her own nationals.

x) Tables, however, were turned after independence, India in the interest of her nationals entered into bilateral conventions for the avoidance of double taxation.

xi) The legislative transformation in this connection indicates that now there are provisions seeking to exchange information lest international tax evasion attempts escape undetected.

xii) The international double taxation conventions can be of two types viz.

a) comprehensive and
b) of limited applicability (e.g. limited to shipping and aircraft)

xiii) Pace of entering into such agreement is very rapid. During the short span of five years from 1985-90 as many as 26 such bilateral agreements have been entered into with other countries. India can look forward in extending its ties with SAARC countries.

CHAPTER 8 : REVENUE DIMENSION

i) It was only the revenue consideration that led to the rise of income tax as a component of Indian fiscal system.

ii) Amount of income tax revenue increased gradually but constantly during the first two phases of development of income taxation in India.

iii) During the First World War period India was ahead in the March from revenue point of view because of the early introduction of Income tax in the Indian fiscal system.

iv) In the Second World War period there was all out increase in income tax, super tax and corporation tax revenue. Introduction of surcharge, excess profits tax etc. were the causes responsible therefor.

v) Income tax revenue was found to decline in the post second world war period. Excessive tax evasion and preoccupation of British Government with schemes of transfer of power were the
causes responsible for such decline.

vi) During the post independence period during the four preparatory years of development yield from surcharge on income tax experienced a sharp rise.

vii) Since 1952-53 for a couple of years income tax revenue showed decline. This may be on account of rise in exemption limit as recommended by T.E.C.

viii) During the period 1958-67 though in absolute terms income tax revenue increased yet relatively it lagged behind the share in total revenue of indirect taxes. This trend continues to date. With economic development as happened in the case of advanced economies the share of direct tax should have increased but with completion of five year plans one after the other Indian experience is just the contrary. This is the paradox of Indian economic development.

ix) The three functions of revenue are:
1) Assessee, 2) Income assessed and 3) Tax demand.

From number of assesses point of view "individual assesses" are more in number, partnership firms rank second and H.U.F. and corporate assesses come next.

But from the stand point of income assessed and tax demanded company assesses rank first followed by other assesses.

x) Analysing the revenue from source point of view income from business, profession, vocation rules the roost, Salary, other source come next. Last in the order is income from (house)property.

xi) At present Government proposes to broaden the tax base. Increase in contribution of direct taxes is need of the hour. Finance Minister's appeal in the conference of Income Tax Commissioners (7th Nov. 1992 at New Delhi) to make efforts to increase the share of direct taxation is relevant in the present context.

xii) Of other parameters of income tax revenue viz. deductions and exemptions leaving other deductions and exemptions to themselves exemption of agricultural income alone has been discussed. Review of changes in policy since 1886 to date the conclusion arrived at in the present study is that there is a strong case of total integration of agricultural income in the mainstream of Central taxation of income. Cognate issues are articulated in model suggestions for reforms. The present study estimates the addition to revenue (if the recommendation be accepted and implemented) to the tune of Rs. 1250 crores.

xiii) The tax evasion is rampant these days. It is a universal
phenomenon and is not unique of Indian system alone. Possibly it is ingrained in human nature. Figures of loss to revenue have been estimated by various panels, committees and economists from time to time. In the contextual fibre of the year 1989 the Present study estimated this loss to the tune of Rs. 1137.34 crores.

Revenue generation is the basic purpose of any fiscal system. Wellknit policy, optimally efficacious an administrative machinery, creation of air of mutual confidence between the tax payers and department and integrity of purpose are the basic prerequisites for generation of revenue without tears. Indian income tax system has to tread a long way in this direction.

MODEL FOR REFORMS

The findings of the present study as presented above and the analysis on which the findings are based make it clear that the hypothesis of the study stands. The period of one hundred and thirty years witnessed a number of changes in the Government Policy and consequently the income tax administration underwent significant changes in India. The taxation being the primary fiscal tool with the changes in economy its objectives also change. Economic development being a continuous process it is natural that the tax system will have to change accordingly. The clues regarding the future directions can be obtained in the history and also the current economic situation. Having established the hypothesis the next task is to identify future directions in which the taxation system is to shape. This has been attempted in the pages to follow in the form of suggestions for reforms. It is needless to state that the model reforms should be free from the weaknesses prevalent in the existing system and at the same time capable of adjustments with the changing future. Similarly, the reforms must lead to the efficient accomplishment of the objectives of taxation policy. Before discussing the nature of reform it is necessary to develop a philosophical base for the same.

Philosophical Foundation

Origin of income taxation is found in the emergency arising out of the war and its continuation had the basic objective of maintenance during the British regime. With the advent of independence taxation gained importance as a major source of revenue for financing developmental activities. Naturally, more revenue, generated through more productive system guided the policy formulation in India. The present state of Indian economy indicates the continuation of this philosophy as the country has to pass a long way to acquire the status of developed nation. Therefore, the philosophy in future as far as income taxation is concerned shall have its focus on more and efficient revenue generation.

At this stage, it would be pertinent to raise the basic issue
as to how to achieve these twin objectives. As far as the first one is concerned increase in the rate of taxes and thereby addition to the government revenue could be considered as one alternative. It may be pointed out that India has already been labelled as the highest taxed nation and the impracticability of this alternative has been elaborately dealt with in the chapter dealing with Government policy. The second alternative in this context is to widen the tax base and through that bring in more volume of tax revenue. This policy may be described as similar to low margin high volume strategy. This implies lower tax rates and more people in the tax net. For bringing more people in the tax net identification of new avenues in the probable alternative. In other words those who were left out of the orbit of taxation will have to be pulled into the same.

For efficient generation of tax it is necessary to look into the weaknesses of the present system. As has been pointed out in the relevant chapter the system has grown more complex mainly because the Income Tax Legislation to which the system owes its origin itself has grown into a highly complex piece of legislation. To overcome this simplicity into legislation itself could be considered as need of the hour.

3) While thinking of introducing any reform in the government policy like its economic implications, political repercussions play vital role. The will to introduce reforms significantly depends upon preparedness to face political challenges and therefore calls for philosophical revolutions in the governmental thinking. Will to face the political challenges is a first prerequisite for the success or otherwise of the taxation system. Such a will on the part of the government is therefore the assumption of the present model.

To sum up, introduced as a war time measure", maintenance objective" guided the taxation policy during the British regime and the developmental orientation occupied its place in free India. The requirements of welfare state and the pace of development will be the factors on which the policy makers of future will have to draw heavily in the matter of designing income taxation policy.

In order to ensure that the reforms to be suggested are free from the defects of the mechanism in vogue a quick look at these weaknesses would be useful. The present system due to number of amendments to the concerned legislation has become very complex for understanding, interpretation and implementation resulting in operational rigidity. While attempting for simplicity, the philosophical outlook canon based and national fiscal outlook should receive due consideration. Thus, the reforms to be introduced should enable maximum revenue generation in a very productive manner and with simplicity of procedure. Therefore the model presented below is conceived with these three major considerations.
1) **Widen the tax base.**

More revenue being the principal consideration the policy makers should think of widening the tax base. At present the main constituents of the tax bed are Income from salary, income from house property, income from business, professions and vocation, income from capital gains and income from other sources; and its main occupants represent individual assesses, Hindu Undivided families, Partnership firms, Companies and other juridical persons. This leads to two alternatives for widening the tax base they are; find out a new type of assessee and/or search out a new avenue to levy the tax the first one is not possible since all the alternatives have been exhausted, the second one offers scope for their could be still some sources of income identified or otherwise but not brought within the purview of income tax, the possible sources of income are salary, business, property, interest and agriculture. A person may have only one or all or any other combination of income. Under the present system if he earns beyond the exemptibility limit from any source or sources except agricultural income he is required to pay income tax. Thus, if the tax base is to be widened since no new type of assessee can be added and since other sources have already been tapped the policy makers are left with no alternative than to consider agricultural income for taxation purpose. Though, attempted during the early period of income tax due to obvious reasons taxing agricultural income has always been a controversial issue. In view of the investment in agriculture and ever growing needs of the economy coupled with the capability (presumably) of agricultural sector to contribute to the national exchequer by way of income tax, this study advocates the total integration of agricultural income in the gamut of central income taxation. The case for total integration pleaded above has already been made in the chapter entitled "Revenue Dimension".

Government shall have to take following steps for putting this recommendation into practice:

1) **Changes in the legislative framework.**

At present agriculture falls in the state list. So far pulling this subject from the state list into central list state governments will have to be persuaded to put up with change with the assurance that it will not result this insignificant loss of revenue to them. An agreement between the centre and states, as was done in case of levy of estate duty, will have to be arrived at, and later on constitution will have to be amended to this effect.

Secondly the present Act also shall be required to undergo certain changes. These changes shall assume following lines.

a) Omit the exemption of agricultural income stated in sec.10 of the present Act.

b) Change the concept of income in the Act, there are two
alternatives for effecting this change viz.

1) A drastic change in the legal definition of income so as to encompass the agricultural income as a constituent of income if this be not preferred:

2) add one more source in the enumeration of income viz. income from agriculture.

1) Assessment

1) The exemptibility limit shall be uniform for all incomes including agricultural income.

2) The schemata for taxation shall be as follows:

i) The gross income shall be arrived at by taking into consideration the gross yield of agriculture.

ii) From the gross yield the deductions for incidental expenses to cultivation and other activities shall be allowed.

iii) Amortisation of capital expenses shall be an admissible deduction the admissible quantum of deduction on this count shall be worked out varying with the nature of the concerned capital asset. e.g. for the purchase of asset like tractor the capital value of the asset shall be spread over 15 years whereas the installation of a motor pump and other ancillary implements shall have a spread over of comparatively short period e.g. five years.

iv) the agricultural insurance or "uncertainty allowance" to be worked out on the basis of agricultural insurance applicable in similar situations.

v) Development allowance for innovations in the agriculture.

Income so calculated shall be a constituent of gross total income of the assessee. Deductions from gross total income shall be applicable mutatis mutandis the status of the concerned assessee.

Identification of assessees in taxable limits

For identification of assessees in the taxable limits the District level Income Tax administration shall work in liason with revenue administration of the district till an elaborate scheme is devised.

Return, assessment and collection
The form of return shall have to be amended so as to incorporate one more source viz. agricultural income and also this change will have to be accommodated so as to suit the requirements of Indian farming community.

The existing machinery and procedures could be harnessed for working out the taxation of agricultural income. In the present context of "industry" of agriculture and its cognate constituents this addition, it is hoped, is tantamount only to addition of one source only in the list of the present sources of income.

**Reforms for productivity**

Productivity in this context implies quick disposal of cases. Rapid turnover ultimately leads to productivity in the overall working which has become a very difficult task due to complexity in legislation and consequent rigidity in procedures. To remove these defects the following administrative reforms are suggested.

  i) **Introduce the element of automaticity in administration**

  During the course of time certain things are neglected and with the stream of times certain things get redundant and are altogether neglected. Statisticity in provision of deduction u/s 16/2 is a glaring example of this. This deduction of entertainment allowance pertaining to employees in private sector stops at the point of entry of employment at 1.4.1955. Persons in employment before this date only are eligible for this deduction. This provision has no foundation in equity. In its practical implementation this is an example of gross staticity. With a view to eliminating this sort of staticity element of automaticity needs be inducted into the functioning of the system. This could be remedied by the machinations of departmental notifications.

  ii) **Introduce Assessment At Origin (A.A.O. for salary earners)**

The main issue of Indian Income tax administration is to match the strength of machinery. With increasing work load. Increasing work load is a continuous process in a developing economy like that of ours. Salary earners numerically is a strength to reckon with. This strength has been ever on increase and this trend is likely to perpetuate in days to come. Salary circles are crowded and over burdened. On the other hand this area is least amenable to tax evasion because of the nature of "income" here. Some salary earners may have non salary incomes and they supposedly are vulnerable to the evil of evasion. The present scheme considers all these latent defects and seeks to serve as deterrent for these evils and predominantly seeks to lighten the burden of work of the
A.A.O. (Assessment at origin) is the extension of the scheme of T.D.S. (deduction of tax at source) which has deepened its roots in soil of income tax administration. This scheme suggests the whole procedure of assessment of the salary earner assessee at the employer's end.

This scheme, one is afraid, is replete with following dangers:

1) nepotism at employers end.
2) corruption and omissions on the part of the employers.
3) problem of employees in multiple employments.

Before dealing with remedial aspect of the aforesaid flaws let the substantive scheme be discussed:

The employer shall procure the information of his employees along with the affidavits from them pertaining to the truthfulness of the information furnished.

After procuring the information the employer shall make assessments and collect taxes at sources and send the copies thereof to the department.

Sending copies of assessment to department shall itself serve as a device to mitigate the first danger of nepotism at employer's end.

For mitigating the second potential danger of omissions and corruption at his end the provisions of "tax audit" could be an effective measures.

The concept of tax audit is that there should be regular audit in relation to proper observance of the scheme of A.A.O in the organisation concerned.

Assessment of employees in multiple employments option should be given to employee concerned with a check on this in the form of that he should prefer an employer from whom he draws more amount of salary income.

Introduce tax Audit

Tax audit is suggested as a control measure for proper implementation of A.A.O. scheme. It is thus clear that the scope of the tax audit shall be limited to assessment of salary earners only. The main purpose of such an audit shall be to verify the observance of rules and procedures for assessment at origin. The tax audit shall be compulsory and the practising Chartered Accountants shall be empowered to conduct such audit and issue a certificate accordingly. Employer while furnishing the documents pertaining to assessment shall have to submit this certificate.
Linking Exemptibility Limit with Indexation.

Exemptibility limit has been a hotly debated issue of late. It had entered in election arena during the parliamentary elections of 1991. Political parties with their various ideologies and contentions stretched the issue so far that this issue lost its logical propriety. If exemptibility limit is allowed to be so decided it will lead to aberrations in the income tax system which will utterly be wanting in element of "proportion". The bone of contention with this issue is that exemptibility limit fixation always lags behind the true ability to pay of the tax payers and thus tax payers in real terms are always put to disadvantage comparatively. With a view to finding solution once and for all and with a view to bringing about predictibility it appears only propitious to link this issue with the indexation of cost of living index numbers.

Suppose B is base year during which E i.e. exemptibility limit stood at 15000

C is current year in which the cost of living index has just touched the point of 300. The exemptibility limit therefore should be thrice that prevailed in the year B. Thus it would come to Rs.45000.

Introduction of this element would not only remove the element of uncertainty but also serve the purpose of justice in taxation. It would also help the tax planning process at the assessees' end and thereby act as indirect motivation to regular and reasonable tax payment.

Here an argument may be raised against this suggestion, that it may have adverse effect on "revenue".

This may be true in the short run. Since it is the reflection of the principle of ability to pay it will help, in the long run in developing favourable attitude of tax payers and thereby motivate them to estimate their tax liability well in advance and plan accordingly. Thus it would certainly act as a deterrent to tax evasion and result in mitigating the adverse impact on revenue. This will have favourable impact in the national character also in the form of boosting morale of tax payers.

Social Dimension Of Income Tax.

Income tax has ever been viewed as an economic legislation mainly. Areas of possible contributions of income tax to social change are yet to be explored. In view of this the following, suggestions that may help in giving social dimension to income tax be considered.

1) Incentive for Family Welfare:

A number of measures have been introduced by the
government to check the population growth under family welfare programme. The potential of income tax incentives has however not been considered so far. It is felt that such an incentive will certainly help in adoption of the family welfare concept and would serve the national objective as well as the objective of the individual tax payer. The nature of incentives to be offered through Income Tax Legislation may be as follows:

A) The assessee limiting the size of children irrespective of their sex to two only be allowed full exemption on expenditure incurred by him for education of his children.

B) As assessee limiting the size of his family to two female children only be allowed in addition to exemption under 'A' above, amortisation of the expenses on marriage for 5 years for one daughter extendible to 10 years.

C) An assessee limiting the size of his family to one child only (irrespective of sex) be made entitled to, in addition to A and B above, amortisation of capital expenses incurred by him in helping his child establish his/her professional enterprise.

The suggestions made above have their parallels in France where social incentives in the form of certain reliefs from income tax have been made available for expansion of size of families and maintenance of familiar harmonies.

4> Formation of National Economic Court

As pointed out elsewhere complexities in Income tax legislation lead to over litigation. The departmental remedies cater for the demand for justice of assesses only to limited extent. The inevitable result is heavy flow of appeal cases to High Courts. As is well known High Courts are already over burdened as they have to deal with variety of cases, involving civil criminal and taxation problems. The natural result is delay in deciding the cases. This affects the assessee, the department and the revenue also. To overcome this situation creation of National Economic court is being discussed these days. The study endorses the need for such an alternative arrangement and suggests that these courts should occupy a position below High Court and above Departmental judiciary. As regards the composition of the court it shall have representation from the experts in various walks of life, in addition to the judges. Such a composition is suggested to fill the long felt need of public participation in income tax judiciary. The court shall deal with all matters pertaining to direct taxes with the exception of those involving issues pertaining to fundamental rights. Only such issues, involving violation of fundamental rights may be allowed to be appealed against in the High Court. This would certainly reduce the burden of the High Court and quicken the process of justice.

5> Statutory Amendments For Reforms
For introducing the reforms suggested above the present Act needs modifications. Amendments to the Act are also required to remove the anomalies inherent in the same. Modifications suggested below are therefore grouped under two heads (i) for implementing reforms, (ii) remedials to anomalies.

1) Reform related amendments

(A) For effecting integration of agricultural income,
(B) Amendment to constitution for removing the constitutional barriers for effecting the above integration,
(C) For introducing the scheme of Assessment at origin (A.A.O.) for salary earners.
(D) For introducing tax audit.
(E) For introducing the concept of indexation of exemptibility limit.
(F) For making provisions for incentives suggested under social dimension.
(G) For creating national economic court.

II) Remedials to anomalies:

(a) For introducing the element of automaticity,
(b) For removing certain anomalies pertaining to certain types of assesses viz. H.U.F. and Partnership Firms. As the nature of amendments needed in this respect has not been dealt with in discussion in this chapter details are given below:-

Treatment of H.U.F. assessee brought to light certain anomalies and inequities inherent in the taxation of H.U.F. assesses. These anomalies and inequities remain in the taxation of H.U.Fs. because the anatomical attributes of this assessee have long been neglected and taxation thereof based on erroneous concept. The model suggestions in this connection are on the following lines.

Hindu Undivided Families, as tax unit be divided into two viz.

a) H.U.Fs. joint in estate but living separately.
b) H.U.Fs. joint in estate and joint in living also.

a) H.U.Fs. joint in estate but living separately.

At present all H.U.Fs. are treated like individuals (with the exception of a little of differential treatment in the matter of rates and deductions from A.Y. 1973-74 as a result of recommendation of Wanchoo Committee. But this does not suffice to cure the malady) The present schemata ignores the twin formats of the assessee and all H.U.Fs. are uniformly treated. But H.U.Fs. joint in estate but living apart, no longer constitute one single
unit of taxation. Only spiritually it continues to be so. The injustice of treating such a unit as person is patent. It is suggested that such families be treated for income taxation purpose as some organisation analogous to companies. They may be taxed at the maximum rates and refund be allowed to members whose personal rates are less than the maximum. Members of such families be made to include in their personal income their shares from H.U.F.

Such a system will bring the taxation of these H.U.Fs. into line with individual's ability to pay. To avoid the creation of fraudulent shares of the joint family income it may be provided that the proportion of the shares returned for income tax purposes shall be regarded as holding good also for the purposes of partition. This scheme shall however not be propitious for H.U.Fs. joint in estate as well as in living. It would warrant a differential treatment.

b) **Suggested reforms for H.U.Fs. joint in estate as well as joint in living.**

It is worth bearing in mind that H.U.F is not only a mechanistic association of individuals but it embodies sanctity of Hindu way of viewing human relations. Even if one comes down to the practical plane of worldly transactional level one finds that community of interest and unity of possession are the essential features of the joint Hindu Family. The company orientation of scheme of taxation of such H.U.Fs. shall not be in consonance with the intrinsic nature of such families.

The income of these families is not divided amongst the coparceners of the property but much more expenditure is laid on the maintenance of them. Such an H.U.F. therefore, be treated as an individual, but it should be taxed only on the excess of its income over what is necessarily spent on the maintenance of the coparceners. For complying with this scheme concepts of personal allowances may be made use of and the calculus of this allowance could be worked out.

A caveat however, is needful, to prevent fraud, it may be provided that any person for whom an allowance is claimed as a coparcener will be so treated for the purposes of partition as well. The excess of the joint family income over expenditure will be its taxable income. Allowances for children and marriage should not be given in case of such families, unless the allowances claimed are on behalf of persons who are themselves not coparceners. This is with a view to preventing duplication of allowances.

Members of these families should be allowed, as at present, to exclude their joint family income from the computation of their personal rate, as they are really not in receipt of joint family income.
The other area of assesses where the present schemata of taxation leads to the violation of justice and non observance of doctrine of ability to pay is the taxation of partnership firms. Present classification of firms into unregistered and registered firms and differential treatment of the two on the touchstone of any canon of taxation can hardly be justiciable. With a view to remedying the malady following suggestions are made:

1) The present classification into unregistered and registered one is not plausible. This classification therefore be done away with and all partnership firms be uniformly assessed to income tax.

2) Firm, alongwith its own return should submit the returns of the partners showing their other incomes and on the basis of this joint scheme the firm should be made to deduct the amount of tax payable from the share income (if positive) and if his other income is negative there should not be any question of deduction if his share income is less than exemption limit. On line with salary( This, however, should not be construed to be a suggestion to the effect of admission of employer-employee relationship between partnership firm and the partners). T.D.S. scheme could be framed.

3) As against Chelliah Committee recommendation ( which G.O.I accepted vide 1992 budget) present provision of adding back pertaining to salary, bonus, commission and other remuneration to partners be not removed and status quo ante be maintained in this connection. The present position is justiciable on two grounds, viz. (a) its elimination is likely to be abused as a tool of tax avoidance and (b) it is based on sound theory.

If salary, bonus, commission etc. be made admissible ( which is made admissible through budget provisions which subsequently could get a place in the finance Act 1992) the admissibility of above would be tantamount to the proposition that there is a relationship of employer-employee between the firm and the partners.

But this is not a truism. The crux of partnership relationship, it is agreed on all hands, is that of agency. An agreement that a partner is to receive a 'salary' does no more than to regulate the mode in which accounts are to be taken for the purpose of division of profits among the partners ( Ellis Vs. Ellis Joseph and Co. (1905) 1 KB 324 (a) ). It, in no way, mars the proprietary role ( albeit in part) of a partner. Same logic could be extended to bonus. In the same way interest on capital and advances are also a specie of financing of business by the partner and therefore by any stretch of imagination transaction of payment of interest by firm to partner can not attribute the relationship of creditor-debtor between the partner and the firm. Partner's role, is, above all, that of proprietor of the business ( albeit in predetermined share). This fact can not be lost sight of in framing the scheme of deductions for a firm. This theory is
explicitly (in the legal provisions) and implicitly (by legal interpretation thereof by courts) has been upheld. So far as partner partnership relationship is concerned and therefore as against the clear recommendation of Chelliah committee it is therefore suggested so far as scheme of deductions of salary, bonus commission, interest on capital and (and advances by partners to firm), and other remuneration are concerned. Status quo ante be maintained.

4) The present rate structure for registered firms may be maintained for partnership firms uniformly.

5) All firms shall be of uniform type and provisions applicable to registered firms be made applicable to all firms.

6) A.O.P. (Association of Persons) and B.O.I (Body of individuals) be treated on par with firms and be assessed to income tax like partnership firms.

Though the Company assesses occupy the position of paramount importance no specific suggestions have been made as the Chelliah Committee has already made number of recommendations in this respect. This leaves practically no scope for making any suggestions in this connection at the present juncture.

A CASE FOR NEW ECONOMIC CODE

Income tax Act has already been overflowing with multiple amendments so much so that owing to these amendments it has turned to be the most complicated piece of legislation. If aforesaid modifications are incorporated by amendment to the Act it will only add to the magnitude of complexity in the legislation. This leads to the need for a new economic code the rationale for which is presented below:

Anatomical changes suggested

1) Substitution of present statute by a new Direct Tax Code Rationale

Even a cursory glance at history shows that structural changes in economy warrant outright changes in tax structure also.

This in turn requires replacement of Income Tax Statute. History abounds in examples of this tendency. 1886 Act was replaced in 1922, through intermediate interventions of 1916 and 1918 statutes. 1922 statute was replaced in 1961 i.e. within the period of four decades.

Now, it is three decades the present statute remained in operation with patchwork of Amending Acts. Patchwork can never serve the purpose of a new garment. Amendment is always exigential and caters for short term remedies. Conglomeration of such measures can never provide a remedy for long run solution of
problems. Hence the need for outright replacement of the present statute by a new Direct Tax Code.

Chelliah Committee pointed out the need only and did not recommend even an outline of the scheme. This can constitute a distinct subject of research with legalistic approach. Be that as it may, below are indicated certain lines in this connection.

1) An exhaustive code for direct taxes be enacted. This code should contain provisions for all direct taxes. In the sphere of direct taxation Wealth Tax, Gift Tax, etc happen to be sister branches with income tax. Hence the case for a direct taxation code.

2) Some times there are intra-inconsistencies in relation to these pieces of legislations.

3) Income tax, Wealth tax are the species of the same genus viz. income is the flow from the wealth or property and income not spent in turn manifests itself in the wealth and transference thereof constitutes the Gift the subject matter of Gift Tax Act. Law relating to all these phenomena therefore, needs be interwoven in a common Direct Tax code.

4) Income tax as a branch of this code must provide for clear and exhaustive definition of income. It is a common experience that absence of such clear definition of income leads to multiplicity of litigation. The present provision pertaining to the concept of income in the Act is enumerative rather than exhaustive. The new could should attempt exhaustive definition of income and arrive at the consecration of the legislative definition with sound background of economic and accounting base for the concept.

5) The definition clause of the statute should take care that the the cognate concepts be defined so as to encompass the variations concomitant with the modern technological advance and also should make room for accommodation of the potential extensions thereof.

6) The asseses be clearly defined in their present form and changing dimensions. The articulation of H.U.F. and partnership firms in the present study may provide a sample for the visualization of tax unit aspect in the code.

7) Depreciation scheme in the new code shall provide for replacement cost of the assets the pace whereof in modern times is growing fast. Of course in-depth study by expert panels shall be required for articulation of details of the depreciation schemata under the new code.

8) Relief in the form of deductions, allowances, abatements etc. be thoroughly overhauled so as to cater for the modern day requirements of the economy and tax structure.
9) Calculus provided for in the minor details become ridiculous e.g. addition of Rs. 150 for Chauffeur's salary in the valuation of car perquisite. Actual wages of chauffeur in practice are far different from this. This divergence is not negligible. This happens with many other calculus. So, instead of providing changes for such matters in the Finance Act indexation thereof provided in the code itself will go a long way and shall serve to avoid complications.

Directions for further research.

The area of income taxation is a vast area. This is a field where changes are fast taking place. It becomes needful to keep abreast of these changes. These changes provide a fertile area of research for the potential researchers in the field. Ideas that occurred to the researcher during the course of this study led him to suggest the following researchable areas to explore in this field:

1) "A study of Direct Taxation with special reference to seeds of income taxation therein in the fiscal frame work of ancient India".

2) "A comparative study of income tax systems of developed and developing economies".

The latter would be more beneficial in view of the structural similarities.

3) "Legalistic study of Indian Income Tax Act with reference to and lines for Direct Tax Code."

4) "A study of Indian Tax judiciary in retrospect and prospects".

5) "A study of productivity of Indian Income tax administration.

6) "Analysis of international double taxation avoidance conventions with special reference to Indian bilateral double taxation avoidance conventions".

Indian income taxation system has seen through multifarious vicissitudes in its existence of one hundred and thirty years. Past offers a very rich heritage. The present appears to be gloomy because of the many evils viz. tax avoidance and evasion, problem of arrears of assessments and collection, inefficacy of income tax administration, absence of building of healthy public relations with tax payers and above all the incompatibility of present day statute to the problems of the day. If the model suggestions are implemented with eyes wide open to the implicit risks there is no reason why the income tax system in India should not depict a buoyant picture for itself. Threads being taken from
the rich heritage of the past and a new liberal approach with the New Economic policy wide opens the vistas for the happy itinerary in the future of this very important fiscal measure in Indian economy.