CHAPTER I

HISTORICAL PERSPECTIVE
For a proper comprehension of our direct taxes machinery it is imperative to trace its past as far back as possible, without prejudice to the target purpose of this study. I will not deviate from the main tract by wading deep into details of the past. Yet sketching an outline of the relevant aspects of India's direct taxes history is the purpose of this chapter.

(A) Pre-1860 Period

Eighteen hundred sixty was the year when for the first time Income-tax was levied through a regular statute. Therefore, I will gloss over the pre-1860 period touching broadly upon direct sources of revenue prevalent from time to time. The Hindu Law Code tells us that the king had authority to levy and collect, in cash and kind, direct taxes on earnings of the land-lords, artisans and merchants. Also, the state had share in gold, cattle and other moveable property of the governed. Taxpayers included butchers, dairy-men, stone-cutters, basket-makers, wood-cutters, porters and tanners etc. The objects of taxation were, thus, land produce, personal property and the estate left by the heirless deceased. This system continued more or less uniformly during the entire early

2. Ibid Ch. IX, Verse 189
Hindu period. Twelfth century saw the dawn of Mughal rule. It continued till the beginning of eighteenth century though with important interruptions due to Maratha power.

Land revenue continued to be the main impost during the Mughal period. Besides, there were the capitation tax collected from non-Muslims (JEZIAH), a levy on timber, the tax gathers' commission, the mint charge and, offerings to the emperor, etc. Also there was capital gains tax on sale of house property and a tax on manufacture of items like liquor, dying material and lime. Akbar's period saw a marked departure. He did away with most of the above mentioned taxes (including jeziah). He started, instead, a ten year settlement in the case of land tax and started realising taxes only in cash and not in kind. The Marathas were champions of small nationalities. Decentralisation of taxation was one of their original ideas. Leases were granted to peasants over pieces of agricultural land for as many as seven scores of years. The assesses had access even to the finance minister in case they disputed the quantum of levy. Apart from


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this land cess, there were taxes levied on offerings of pilgrims during religious fairs, the Maratha Chauth (receipts from the vanquished), taxes on merchandise and manufactured items, grass-land profits tax and tax on rent free lands.\(^5\)

In later half of eighteenth century Shah Alam II granted Diwané of Bengal, Bihar and Orissa to East India Company. Thus administration and collection of revenues in these areas passed on to the Company. Apart from land revenue the other direct taxes levied by the Company were SAYAR\(^6\) other receipts from cultivators—collection from places of pilgrimage, collection from "Bazars" and town duties. Till the middle of the nineteenth century, however, land-cass formed more than half of the total collection (£ 15,365,000 out of £ 28,610,000).\(^7\)

It goes without saying that the system of taxation was as much adversely affected by the developments of 1857 as any other aspect of life. This resulted in enormous deficit. The post-mutiny government, therefore, resorted to a new system of levy and collection.\(^5\) This formed

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5. Ibid Vol. II page 238
6. See "Select Committee on East-India Affairs"-Vol.IV.
7. See East India Accounts & Papers. 1952-53.
basis of the scheme of income-taxation in British India. A team of experts of the British Treasury headed by J. Wilson came to India to consolidate the taxation system. Thereby came into effect a formal system of taxation of incomes of all kinds. It brought to taxation profits and gains from lands and houses professional profits, income from trade and employment, interest, annuity and dividends.

Each person liable to the tax was required to furnish a statement (unsworn) of his income (approximate) to a Committee (Panchayat) appointed by the District Collector. This Committee made the assessment of income. Appeal against these orders lay before the Collector whose duty also included execution of the Income-tax Act and distribution of duties thereunder. In big cities special officers (Commissioners/Collectors) were appointed to execute the levy and collection of Income-tax. Thus came into implementation what may be called the Income-tax Act 1860.

Results of this law were however, not encouraging. For the first five years it gave to the government a petty sum of one hundred fifty lac rupees only. The western mode could


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not adopt itself to the eastern culture and conditions of our country being undeveloped and having agriculture as her primary sector. Also the 1860 Act did not incorporate in itself the British Income-tax machinery. This made the job of knowing correct extent of income liable to tax very difficult. All assesseses who were subject to this Act were required to furnish a return of income. Many did not come up to declare their true income. This resulted in imbalances of levy. Similarly at some places not even one-twentieth of the Income-tax returns were accepted by the authorities. More than one-fifth did not bother to furnish the return at all. Provisions for tax-deduction at source was, however, one plus point of the Act.

Some changes in the basic exemption limit and the rates of taxation were made respectively in 1862 and 1863, before the statute being finally abandoned in 1865.

In 1867 was introduced the License-tax which provided for taxation on a graduated sales on traders, professionals and servicemen. Apart from disturbing balance among different classes of assesseses the statute produced far less revenue than its predecessor did.  

10. See Fawcett Committee Report (1871) Vol. I.
12. Lord Lawrence's testimony recorded in Fawcett Committee Report Vol.III 1873.
Repeal of the Licence-tax was followed by Certificate Tax in 1868. Under the new provisions every liable person had to obtain from the authority a certificate in token of having paid the tax. It provided for a lump sum tax in accordance with the rate chart. It was hardly any improvement over the License-tax in any respect. In fact, as a result of its coming into being, the reserves still dwindled.\footnote{For details see Appendix I of the Fawcett Committee Report.}

There was vehement opposition of this Act from Britishers to whom it pinched most. As a result Income-tax Act was again introduced in 1869. However, it was different from the earlier Income-tax Act of 1860 to the extent that the levy was uniform (one percent) on all types of incomes; viz., professions, trades, land holdings, rent and salary. However, now the assesses were not required to furnish statements of income. Rather the Collector was duty bound to send a statement of their tax liability to the assessee. In case the assessee disagreed he had to prove his case in appeal. The authorities used to patronise informers and employed Junior Officers for the...
purpose of assessment. This entailed long standing litigations. Element of corruption also crept in. Rates of taxation were also increased periodically. Yet, the measure did succeed as far as collection of revenues was concerned.

These experiences, nonetheless, gave a lesson that it was not prudent to employ ill-paid government servants in large numbers. For better results local authorities should do this work with the help of non-official committees. The golden rule that dawned upon the Government, as a result of the multiple measures, was that tax deduction at source was one sure method of ensuring maximum revenue.

(B) Late Nineteenth Century Enactments:

Historian tells us that after settling down as suzerain power in India this Britishers had to shoulder the responsibility of governing vast tracts of a virtual continent. They had to find ways and means of meeting the expenses of an administration whose ramifications were fast multiplying. The


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Income-tax Act of 1860, on account of illiteracy of the people which made them an easy prey for fraud and extortion because unpopular and was scrapped in 1873. This devise was, however, revived again in 1877 and one finds that between 1860 and 1886 about twenty-three acts on the subject of Income-tax were passed.

1. **Assessing Mechanism.**

Administrations of the cities like Bombay, Calcutta and Madras were autonomous and they dealt directly with their provincial governments and were subject to the control of Governor-in-Council of the province. These cities had separate Departments of Income-tax headed by a Collector and manned by other subordinate officers who did the work of assessment and collection.

The remaining districts were linked to the provincial government through Divisional Commissioner. The District Collector was assisted by Deputy Collectors, Asstt.Collectors and Tehsildars. In these districts the Income-tax work fell to the lot of the regular administrative staff of the district hierarchy. The administration's duties included revenue collection, general
administration magisterial functions, excise, registration and stamp and what not. Obviously they had limited time and resources to administer the Income-tax Act. Collector was responsible to the Board of Revenue or to the Financial Commissioner, as the case may be, who also head Income-tax appeals.

The Income-tax Act of 1886 provided for tax deduction at source from income disbursed by Government or local authorities. In case of failure to do so the disbursing officer was held to be personally liable. Deduction at source rendered assessment, collection and recovery as a three-in-one operation. This process applied equally to payment of interests on securities. In 1886, however, a clause was inserted in the Act which abolished the deduction of tax at source in the case of private employers, public bodies and companies. Instead, the employer had to submit an annual return of salary disbursement to the Collector. The latter was also empowered to make agreement with the employer to collect tax against commission. The disbursing officer,

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15. See Section 7, 8, and 13.
16. See legislature Council proceedings, 1886.
however, could not enquire into non-salary or non-interest income of the person. In the case of private employer the Collector could not by law enforce deduction of tax. This created a lot of difficulty for the Collector.

No guide-lines nor any training were given to the Collector or his staff for assessment of tax. The Departmental Committee on Income-tax reported that the want of special experts rather than amateure was widely felt in the Income-tax administration in India. Equally important was the necessity of a uniform system at least in the statements of profits to the Collector. Various allowances in computation of business income also varied from province to province, as per discretion of the "Revenue Board or the Financial Commissioner.

Apart from tax deduction at source the assessment of Incomes was made through enquiries and investigations. Results of such enquiries were entered into specially prepared registers. Hence such assessments were known as "assessments by registers." Such assessment also was based on returns filed by the assessee, if so required by the assessing officers. The Collector got prepared
a list of persons liable to Income-tax and the amount of tax to be levied on them. It was displayed in his office for general inspection. It could also be published. This was done in case of persons whose annual income in the Collector's opinion, did not exceed Rs.2,000/-. In case of others the Collector sent a notice to the payee asking to pay the required amount. He could even requisition a return of income from such payee. Failure to furnish these returns could attract penalty.\textsuperscript{18} But in actual practice this provision remained dormant. The authorities were empowered to collect information, summon witnesses and compel production of accounts.\textsuperscript{19} But these provisions also were not usually resorted to. Even when utilised sometimes the noticee would not care to reply properly and in time. There were no sanctions prescribed against non-compliance. There were several instances where various departments of the Government cared a tuppence for the enquiry letters issued by the Income-tax authorities.\textsuperscript{20}

\textsuperscript{18} Section 34 of the Income-tax Act, 1886.
\textsuperscript{19} Sections 28, 45 and 72.
In order to overcome the various difficulties in the system of assessment by Collector and his staff the Provinces of Agra and Awadh introduced in 1897 the "Panchayat System". The Panchayat was a committee of non-official assesses. They gave their advice for determination of incomes of taxpayers. But this system too had its own defects. There were not many persons to be members of the Panchayat as they were afraid of the taxpayer whose income they disclosed. Sometimes, their information regarding the exact income of the taxpayer was also not foolproof.

Similarly, in Punjab was adopted what is known as "Sialkot System". Accordingly, the assessee were divided into groups identified with their profession or trade. After ascertaining the general reputation of the trade and the known extent of its prosperity the Collector fixed a combined assessment of each group. The group could make minor alteration in this assessment. This assessment was apportioned by group among its members. This apportionment was again submitted to the Collector who announced the final individual assessment accordingly. Even after this stage
objections were entertainable which were considered on merits. This system was successful to a great extent as it established revenues and ensured more or less equitable distribution of taxpayer's burden. It also reduced litigation. The system was however not free from defects. Extent of the cumulative income of a particular group was, in effect, wild guess. Moreover, while apportioning the group's income among the members, at times, the not so-well-to-do had to bear greater burden than required.

2. **Appellate Authorities.**

By virtue of Section 39 of the Act, jurisdiction of the Civil Courts was barred in matters of assessments made under this Act. Appeals against assessments lay before higher revenue authorities. The hierarchy is given in the chart displayed herewith:

Collector of the District
/  
Commissioner of the Division.
/  
Board of Revenue
( generally member of the Board who is incharge of miscellaneous revenues )

or

Financial Commissioner

or

Chief Revenue Authority in the Province
/  
Governor-General-in-Council
(acting through the Central Finance Department of Delhi
The Collector was responsible for the correctness of the assessments made. There was, however, no guarantee for the same. This was caused by multiple factors like incomplete accounts, rushing through assessments at the eleventh hour, frequent transfer of the concerned staff etc. Filing an appeal was a simple matter. The appellant had to scribble his objection on one-anna stamp paper and submit it to the Collector. In case he was dissatisfied with the Collector's judgment he could file objections before the Commissioner on one-rupee stamp paper. There was no time-limit for deciding appeals. This resulted in delay in collection.

Appeal against demands exceeding Rs. 250/- lay before the Commissioner. But, in his discretion the Commissioner could call for records of any case even involving revenue of less than this amount. He could either reduce or enhance the demand.

The Board of Revenue or Financial Commissioner came into picture only when some legal point was involved. The Governor-General-in-Council had of course

22. Section 12 and 26
23. Section 27

(Contd...24)
the final authority which was hardly ever invoked.

Cases of dispute involving interpretation of law were referred to the High Court with the premission of the Government. Appeals against the High Court lay before the Privy Council in England. But recourse to judiciary was a rare phenomenon. If at all, the court had to decide what is 'income' as the term was not defined in the Act.

(3) **Collection and Recovery**:

Collection and recovery could be broadly divided into two parts - (a) deduction at source and payment thereof in Government account and (b) direct payment to the treasury. The tax deducted at source had to be deposited in Government account within a week. Private employees got commission for this work. Total tax collected through deduction at source constituted forty percent of the entire tax revenue. The remaining sixty percent tax was collected through direct deposit in the treasury. Usually, the Government staff did not get any extra emoluments for this job. Tax on income below Rs.2,000/- was to be deposited in lump sum on the prescribed date. In other cases two/three instalments were allowed.

24. See General Rules and Orders-Vol.II (Contd...25)
in case of deliberate default on the part of tax-payer in making late payment of taxes due from him the Collector could collect from him double the amount. Other modes of recovery were as under:

1. Writs of demands (or warrants)

2. Arrest and imprisonment.

3. Attachment and sale of moveable property.

4. Attachment and sale of immoveable property.

But these means were seldom resorted to because of the preoccupations of the Collector and his staff in other duties and also because no extra incentive was available to the staff for these duties which were extraneous in nature for them.

(c) The Income-tax Act, 1922.

(1) Administrative Heirarchy:

An experience of sixty two years taught the Government of India that a self-contained code to be

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25. Section 30(1)

(Contd...26)
implemented by a separate machinery was sine qua non for a result-oriented tax system. Thus was enacted the Income-tax Act 1922 following the recommendation of the All India Income-tax Committee, 1921. The administration of Income-tax hitherto carried on by the provincial governments came thence to be vested in the Central Government. Chapter II thereof provided for the administrative hierarchy as under:

- Central Board of Revenue
- Director of Inspection
- Assistant Commissioner of Income-tax (Inspecting and appellate)
- Income-tax Officer
- Inspector of Income-tax

In March 1924 was enacted the Central Board of Revenue Act (Act No. IV of 1924). By virtue thereof the Central Government could constitute a Central Board of Revenue consisting of one or more persons and could make rules for the purpose of regulating the transaction of business by the Board.

The Central Government was empowered to appoint as many Directors of Inspection as it thought fit. These Directors, subject to the Central of the...
Central Board of Revenue, performed such functions of any other Income-tax authority as was assigned to him by the Central Government.

The Government could also appoint as many Commissioners of Income-tax as it thought fit. The Commissioners performed their functions in respect of such areas of such persons or classes of persons or of such incomes or classes of incomes or of such cases or classes of cases as the Central Board of Revenue directed. The Government also could appoint as many Appellate or Inspecting Asstt. Commissioners of Income-tax and Income-tax officers of class I service as it thought fit. The Commissioner of Income-tax could appoint as many Income-tax officers of class-II service and Income-tax Inspectors as was from time to time sanctioned by the Central Government. Subject to the rules and orders of the Central Government regulating the conditions of service under it, an Income-tax authority could appoint such executive or ministerial staff as was necessary to assist these authorities in the execution of its functions.

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We could thus see that a Director of Inspection did not have an original jurisdiction under the Act. He was to perform such functions as ordained by the Central Board of Revenue which were otherwise under the purview of other authorities of the Department. Also we find that right from the Central Board of Revenue down to the Income-tax Officer class I service all authorities were appointed by the Central Government. The remaining authorities, i.e. the Income-tax Officer of class II service, Income-tax Inspector and the assisting executive and ministerial staff was appointed by the Commissioner of Income-tax.

A very important thing to be noted at this juncture is that the Act provided for two separate cadres of Income-tax Officers of class I and class II services. This in effect marred the incentive and morale of the officers. Imagine an Inspector being promoted at the age of, say, forty years as Income-tax Officer (class II) who has to retire at the age of fifty eight years with the same designation (though on paper, may be of class I service). Not that he has been doing the same work all along. The work assigned to him has been changing as he attained seniority in service. Yet the dissatisfaction
of being called Income-tax Officer for a pretty long period of eighteen years or more remains there. The philosophy, if any, behind leaving this lacuna in the Act was beyond common comprehension.

An Appellate Assistant Commissioner of Income-tax was under the direct control of the Central Board of Revenue. He performed his functions in respect of such incomes or classes of income, or in respect of such areas as the Central Board of Revenue directed.

The Inspecting Asstt. Commissioner of Income-tax and Income-tax Officer performed their functions in respect of such persons or classes of persons or of such incomes or classes of incomes or in respect of such areas as the Commissioner of Income-tax directed.

The Inspectors of Income-tax performed 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 were subordinate to such officer or authority.

27. Till 31-3-1939 persons and incomes were mutually complementary. But Income-tax (amendment) Act 1940 made them mutually exclusive.

28. Ibid

29. This provision came into effect from 1.4.1952 through section 4 of the Indian Income-tax Act (Amendment Act 1953. Earlier to that there was no such explicit provision).
The Inspecting Assistant Commissioner was subordinate to the Director of Inspection and to the Commissioner of Income-tax within whose jurisdiction he performed his functions. The Income-tax Officer was subordinate to the Director of Inspection, Commissioner of Income-tax and the Inspecting Assistant Commissioner of Income-tax within whose jurisdiction he performed his functions.

At this stage we note that the Act further perpetuated the confusion by not subordinating the Income-tax officer of the class II service to the Income-tax Officer of class I service. There was no parallel visible in the hierarchy of any other Department of the great Leviathan of the Government of India. Everywhere a class II officer was subordinate to the class I officer but not in the Income-tax Department why? The question remained unanswered.

Cases could be transferred from one Income-tax Officer to another by the Commissioner in his jurisdiction and by the Board throughout the country.

The Director of Inspection, the Commissioner of Income-tax and the Inspecting Assistant Commissioner could issue such instructions as they thought fit for the guidance of any Income-tax Officer subordinate to
him in matters of assessment and enquiry. Also all these three superior officers had powers of enquiry same as the Income-tax Officer had.

All Officers and persons employed in the execution of the Act were to observe and follow the orders, instructions and directions of the Central Board of Revenue. However, the powers were denied to the Board to issue such instructions or directions etc. as could interfere with the direction of the Appellate Assistant Commissioner.

The Central Government could appoint an Appellate Tribunal consisting of as many persons as it thought fit to exercise the functions conferred on the Appellate Tribunal by the Act. The Tribunal consisted of judicial and accountant members. The judicial member was a person who had for at least ten years either held a civil judicial post or been in practice as an advocate of a High Court. An accountant member was a person who had for at least

30. This provision was made by section 85 of the Indian Income-tax (Amendment) Act, 1939. (See Sec. 5A)

31. Till 31.3.1952 only a judicial member could be President. But Indian Income-tax (Amendment) Act 1953 inserted this word.

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ten years been in the practice of accountancy as chartered accountant. A judicial member was appointed as President of the Tribunal. Rules of procedure and place of sitting of a Tribunal and place of sitting of a Tribunal Bench etc. were within the discretion of the President.

(2) : Heads of Income:

The 1922 Act for the first time provided for different heads of income which were chargeable to Income-tax. These were as follows:

(a) Salaries
(b) Interest on securities.
(c) Income from properties.
(d) Profits and gains of business, profession or vocation.
(e) Income from other sources.
(f) Capital gains.

The various methods of calculations of income under different heads and the numerous deductions prescribed in the Act are beyond the scope of this study.

31. Till 31-3-1952 only a judicial member could be President. But Indian Income-tax (Amendment) Act 1953 inserted this word.

32. This item was added by section 5 of the Income-tax (Amendment) Act 1947 (XXII of 1947)

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Nonetheless we note that for computation of income of all types sweeping powers were given to the Income-tax Officer. According to the Act, the income, profits and gains were to be computed taking into account the method of accounting regularly employed by the assessee. But, if in the opinion of the Income-tax Officer the income etc. could not be properly deduced from the assessee's account books then the computation was made upon such basis and in such manner as the Income-tax Officer determined.

(3) **Assessment.**

On or before the 1st day of May each year the Income-tax Officer was to give notice - by publication in the press etc - to all persons who had taxable income requiring him to furnish a return of his income earned during the last financial year (or accounting period) within sixty days or more. The form of such return was also prescribed. The time limit could be extended by

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33. Section 13 - ibid.
34. Section 22 read with Rules 18, 18A and 19

(Contd...34)
the Income-tax Officer in his discretion. Apart from the time bound notification by the Income-tax Officer, he could also issue notice to furnish return of income to any assessee any time during the year, within the given (or extended) time. In case an assessee incurred loss he could furnish a voluntary return and could claim set off of the loss against income of later years as per law.

After receipt of the return the Income-tax Officer could issue another notice to the assessee directing him to produce the required accounts and documents. After seeing the accounts etc. and after hearing the assessee or his representative (or even without doing either of these acts) the Income-tax Officer issued an order assessing the income of the assessee and the tax imposed thereupon.

In case of non-compliance on the assessee's part to furnish the return or to produce the books of accounts etc. the Income-tax Officer could make what was called as "Best Judgment Assessment." In such circumstances registration of a firm could also be refused or cancelled after giving the assessee a fourteen day notice. However, if the assessee was prevented by sufficient cause from

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making the required compliance and he satisfied the Income-tax Officer of his incapacity, the latter could cancel the best judgment assessment and could make fresh assessment.

For non-compliance regarding furnishing the return or production of books of accounts etc. and for concealing the income, penalty as high as 1½ times of the tax demand) could be levied by the Income-tax officer and even by the appellate authorities.

Upon making an order of assessment or penalty the Income-tax Officer issued a notice of demand to the assessee.

(4) **Appeals:**

(a) **Appellate Assistant Commissioner:**

The assessee could prefer an appeal before the Appellate Assistant Commissioner within thirty days. But before doing so he had to pay the sum demanded from him as tax or penalty (with interest). The Appellate Assistant Commissioner could fix a day

35. See Sections 23 & 27.
36. Section 28.
37. See first proviso to section 30.

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and place for hearing the appeal and could give adjournments. He could make further enquiries of his own or through the Income-tax Officer. He could entertain any ground of appeal not originally resorted to. In disposing off the appeal he could confirm, reduce, enhance or annul an assessment or could set aside the assessment directing the Income-tax Officer to make a fresh assessment of his own or as per directions issued by the Appellate Assistant Commissioner. Even an order of cancellation or refusal of registration or an order of penalty could be appealed against and the appellate authority had powers to give or restore registration and to cancel, reduce or enhance penalty. The order passed by the Appellate Assistant Commissioner was to be communicated by him to the assessee and to the Commissioner.

(b) Appellate Tribunal:

In case of objection to the order of the Appellate Assistant Commissioner the assessee or the Commissioner (through the Income-tax Officer) preferred an appeal to the Appellate Tribunal within sixty days of the receipt of the Appellate Assistant

38. Section 31.
39. Section 33 (See specially sub-section(6))
Commissioner's order. This was to be accompanied by a fee of one hundred rupees. The Tribunal had absolute powers to pass such orders as it thought fit, after giving reasonable opportunity of being heard to both the parties. The order was communicated to the assessee and the Commissioner. In matters of fact finding the Tribunal's order could not be appealed against.

(c) **Commissioner:**

The Commissioner of Income-tax could of his own motion call for the records of any proceedings under the Act in which an order was passed by any of his subordinate authorities (which did not include Appellate Asstt. Commissioner)\(^\text{40}\) and could make such enquiry directly or indirectly and could pass such orders as he thought fit excluding an order which was prejudicial to the assessee. His jurisdiction of the Commissioner was barred in case of pendency of appeal before any appellate authority and in case time limit for filing appeals before such authority had not elapsed. Also the Commissioner could entertain

\(^{40}\) See sub-section (4) of section 5.

\(^{41}\) Section 33 A.

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and make such revisionary order only within one year of date of order sought to be revised.

Section 35-B, however, gave blanket powers to the Commissioner even to enhance an assessment. Likewise he could cancel the assessment directing the Income-tax Officer to make a fresh assessment. For this purpose the time limit was two years reckoned from the date of original order. If the assessee objected to the Commissioner's order he could appeal to the Appellate Tribunal in normal course.

(d) High Court:

Within sixty days of the receipt of the Tribunal's order the assessee or the Commissioner could require the Tribunal to refer to the High Court any question of law arising out of such order. Within ninety days of the receipt of such application the Tribunal had either to draw up statement of the case and refer it to the High Court or could refuse

42. In case where the Commissioner was acting u/s 33A on an application by the assessee he could extend this time limit in his discretion- See section 17 of the Indian Income-tax(\#amendment)Act 1953(XXV of 1953).

43. See Section 66

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to state a case. In the latter event the assessee could withdraw his application within thirty days.

In case of the Tribunal's refusal to state the case on the ground that no question of law arises, however, the assessee or the Commissioner could apply to the High Court within six months. If the High Court did not approve of the Tribunal's decision it could require the Tribunal to state the case and refer it. Upon such reference the High Court could decide the question of law raised thereby. Notwithstanding that a reference was made to the High Court, Income-tax was payable in accordance with the assessment made in the case. In the High Court the reference was to be heard or decided by bench of at least two judges. In case of equal number of judges holding opposite views, one more judge was added and the matter was decided. 44

44. This whole provision regarding constitution of High Court Bench and the method of arriving at a decision was inserted vide section 8 of the Indian Income-tax (Amendment) Act 1926(XXIV of 1926)
(c) Supreme Court.

An appeal lay to the Supreme Court from any judgment of the High Court if the latter certified it to be a fit case for appeal to the Supreme Court. The provisions of the Code of Civil Procedure, 1908 relating to appeals to the Supreme Court applied in such cases also in like manner as they applied in the case of appeals from decrees of a High Court.

Payment of Income-tax on original assessment made by the Income-tax Officer was not affected even if the matter was under consideration before the Supreme Court.

(5) Miscellaneous Powers of authorities.

(6) Evidence on oath etc.

The Income-tax Officer, Appellate Assistant Commissioner and Appellate Tribunal had the same powers as were vested in a Court under the Code of Civil Procedure, 1908 when trying a suit in respect of following matters -

45. Before 1950 such appeals lay before "His Majesty in Council". The change over came through the Adaptation of Laws Order, 1950.

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(1) enforcing the attendance of any person and examining him on oath or affirmation;

(ii) compelling the production of documents;

(iii) issuing commissions for the examination of witness.

Any proceedings before the aforementioned authorities came to be considered to be "Judicial proceedings" within the meaning of Sections 193, 196 and 228 of the Indian Penal Code.

Any authority mentioned above could impound and retain in its custody for such period as it thought fit any books of account or other documents produced before it in any proceeding under the Act. Before doing so, however, the authority concerned was required to record the reasons for doing so.

(b) Power to call for information.

The Income-tax Officer or Assistant Commissioner could require any firm or Hindu – undivided family– to

43. For retention of books of account for a period exceeding fifteen days (exclusive of holidays) Commissioner's approval was required.
furnish him with a return of the members of the firm, or of the manager or adult members of the family and their addresses. He could require any person whom he had reason to believe to be a trustee, guardian, or agent to furnish him with a return of the names and addresses of the persons for or of whom he was trustee, guardian or agent. He could require any assessee to furnish a statement of the names and addresses of all persons to whom he paid any rent, interest, commission, royalty or brokerage together with particulars of all such payments. He could require any dealer, broker or agent, or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange had paid any sum in connection with the sale, exchange or transfer of a capital asset or on whose behalf or from whom he or the Exchange had received any such sum, together with particulars of all such payments and receipts.

47. This provision was brought into effect by Section 44 of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939).

(c) Power to inspect registers.

An Income-tax Officer or Assistant Commissioner or a person duly authorised by either could inspect and copy out registers of the members, debenture-holders or mortgagees of any company or of any entry in such registers.

Thus the difficulties which were being faced by the authorities before enactment of the Act of 1922 in getting proper background material for issue of notices to tax payers were removed to some extent by these provisions. Yet there was scope of a lot of improvement as we would presently see in the forthcoming chapters.

(6) Collection and recovery -

(a) Deduction at source -

The following persons responsible for making payment of salaries or interest on securities or other interest were required to deduct Income-tax at the prescribed rate and credit the amount so deducted in the account of the Central Government within the prescribed time :-
1) The employer or company (including its principal officer) in case of salaries.

ii) The local authority or company (including its principal officer) - in case of interest on securities.

iii) The payer himself - in case of interest other than interest on securities.

(b) **Advance-payment**

In case of incomes on which tax was not deductible at source the Income-tax Officer could on or after 1st day of April, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, September, December and March in each financial year one fourth of the amount of Income-tax calculated on his income the last accounting period. The Central Government paid interest @ 2½ on such payment reckoned from the date of payment till the date of assessment.

In case the assessee was of the view that his liability for the current year would be less than mentioned in the notice received from the Income-tax Officer, he could give his own estimate and pay...

(Comtd....45)
advance tax accordingly. In that case if, however, on final assessment his estimate turned out to be wrong in favour of the Department, he was required to pay interest @ 6% on short payment of advance-tax. Also, if the Income-tax Officer was satisfied that the assessee gave a wrong estimate in order to benefit himself, he could impose penalty as in the case of concealment of income referred to earlier in this chapter. Also in case of new assesses who did not have had taxable income earlier it was the liability of the assessee themselves to furnish estimate of their income and pay proper advance-tax thereupon.

(c) Recovery through coercive means:

Taxes not deducted at source or not paid in advance were to be paid directly within the prescribed time limit. In case of default there was provision for recovery through coercive means.

The Income-tax Officer could forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee.
On receipt of this certificate the Collector was
to proceed to recover from such assesses the amount
specified in the certificate as if it were an arrear
of land revenue. For this purpose the Collector had
the powers which under the Code of Civil Procedure,
1908 a civil court had for the purpose of recovery of
an amount due under a decree.49

If any assesses was in receipt of salary
income the Income-tax Officer could require any
person paying the same to deduct the required sum
from the salary and pay it to the credit of the Central
Government. Similarly any other debtor of the assesses
could also be called upon by the Income-tax Officer to
deduct and make payment like-wise. Any person dis-
charging any liability to the assesses after receipt
of such notice was personally liable to the Income-tax
Officer to the expert of assesses's default or the

49. This provision was made by Section 16 of the
Indian Income-tax (Second Amendment) Act, 1933
(XVIII of 1933)
amount payable from him to the assessee, whichever was less. In that event the Income-tax Officer could issue certificate to the Collector against such defaulting persons as if the tax was recoverable from him. Recovery proceedings had, however, to be commenced within one year from the last day of the financial year during which the demand was made. The Income-tax Officer could also issue a recovery certificate to a Collector in Pakistan through the Central Board of Revenue.

No person could leave India for journey abroad unless he obtained a no dues certificate under the Act from a competent authority or a certificate stating that satisfactory arrangements were there for payment of taxes. If any person or agency allowed such travel without getting the certificate from the passenger (Assessee) he or it was personally liable to the Income-tax Officer to the extent of liability of the assessee.
(7) **Offences and penalties.**

A person could be convicted before a Magistrate and be punished with fine which could extend to ten rupees for every day of default if he failed without reasonable cause or excuse -

a) to deduct and pay the required tax.

b) to furnish a tax-deduction certificate to the person against whose payment the deduction was made.

c) to furnish to the Income-tax Officer the required statement regarding payment of dividends, interest, or salaries etc. which he was required to furnish as per law.

d) to furnish to the Income-tax Officer the required books of account during assessment proceedings, and

e) to grant inspection or allow copies to be taken of the registers of a company.

If a person made any false statement before the Income-tax Officer he was punishable, on conviction

(Contd....49)
before a Magistrate, with simple imprisonment which could extend to six months or with upto Rs.1000/- or with both.

Prosecution could be launched only at the instance of the Inspecting Assistant Commissioner who could, at any stage, compound any offence.

It is, thus, seem that the Act of 1922 was a great improvement over the hitherto loose system of implementation of Income-tax provisions. Earlier to this it was more or less the willingness of the assessee to come forward and pay tax. Now, after getting some back ground material in the form of statements etc. from persons making different types of payments to the taxpayers, the Income-tax Officer could call upon them to furnish return of income, could examine the books of account, could call for any relevant information from the assessee and from others and could make assessment. The tax could be collected now

(Comtd.....50)
apart from deduction at source through advance-payment as also through coercive measures. The Collector had to interfere for this purpose. The Income-tax Officer could directly collect assessee's tax from his debtors. Stringent penalties were provided for defaulters who could even be imprisoned and fined. A network of tax officials was spread over the whole country which was governed by the Central Government through a well-defined hierarchy. Avenues of appeals were open to the assessees so that their normal rights were ensured.

The Amending Act of 1939, as we have seen, brought far-reaching changes into the Act of 1922. It gave legal shape to the recommendations of the expert Income-tax Committee appointed in 1936 in which the views of the trades and professions were adopted to an appreciable extent. Both machinery and procedure were reoriented by this amending Act which had a significant impact on the administration of the Department.

(Comtd....51)
This included setting up of the Appellate Tribunal and the bifurcation of functions between executive and appellate authorities.

Similarly the years of 1947 and 1953 witnessed the introduction of significant changes which consolidated the tax machinery. The Taxation of Income (Investigation Commission) Act, 1947 received the Governor-General's assent on 18 April 1947 and came into effect from 1st day of May 1947. The Commission was entrusted with the following tasks:

- Investigation of certain specific cases of tax evasion and
- Reporting on the existing law.

Recommendations of the Commission were incorporated in the Income-tax (Amendment) Act 1953 which was given effect from 1.4.52. It was followed by the Taxation Enquiry Commission, 1953 whose findings were given effect from time to time. Nonetheless, there was still much to be achieved. How did we do this we shall see in the forthcoming chapters.

(Contd....52)
(D) **Growth between 1922 and 1968.**

Since 1920 as many as fourteen committees/commissions were constituted to enquire and report on the working of the Income-tax Department in India. There are as follows:

1. Royal Commission, 1920
2. All India Income-tax Committee, 1921
3. Aiyer Committee, 1936
4. Income-tax (Investigation) Commissioner, 1949
8. Law Commission, 1958 (Twelfth Report)
9. Shah Committee, 1963
11. Tyagi Study Group, 1968
12. Waman Committee, 1971
13. Choksi Commission 1978

(Comtd...53)
I will not hazard a detailed comparative study of reports of these committees etc. since that would itself require at least one separate thesis to be written. Yet we find that the Income-tax organisation has been ever since growing. The number of assesses has been increasing year after year. The assesses have been trying to find out new methods of tax avoidance and tax evasion. The legislature has been trying to plug the loop-holes. It is practically the proverbial cat and dog race. All this has had its own impact on the administrative machinery of the Department. Having been grilled all along through the tumultuous societal changes of mid twentieth century our tax administration has emerged to be what it is today. Before switching over to a detailed study of today's Income-tax administration we will pause for a moment and would briefly ponder over the mechanisms of three other direct taxes viz.
Estate Duty, Wealth-tax and Gift-tax, which were brought on the Indian statute book in the sixth decade of the present century.

**Estate Duty Act, 1953.**

Levy and collection of Income-tax the Income-tax Investigation Commission's activities prevented to some extent further concentration of wealth in the hands of those who were already wealthy. Yet these did not amount to positive steps in the direction of reducing the existing inequalities in the distribution of wealth. It was thus thought that by the imposition of an estate duty such unequal distribution could be rectified to some extent. The Estate Duty Act, 1953 was thus passed with the object to impose an estate duty on property passing or deemed to pass on the death of a person. The duty was levied on the inheritance as a whole i.e. on the estate of the deceased treated as a simple unit and before its appropriation by the heirs and legatees. It falls upon the property passing on death irrespective of its destination. 50

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Section 4 of the Act described the various authorities for the purpose of administration of Estate duty and their respective functions. The hierarchy was almost the same as under the Income-tax Act. The apex body was the Central Board of Revenue. Then followed the Controller of Estate Duty, Deputy Controller, Assistant Controller and Valuer. Simultaneously, there were appellate authorities including the Appellate Tribunal. The Central Government appointed valuers and fixed their remuneration. But the valuers were not called upon to follow the orders and instructions of the Board. Nor could the Board issue any directions to the appellate authorities. Incidentally the administrative and appellate authorities for the levy of Estate-duty were the same as those for Income-tax. The final fact finding authority was the Appellate Tribunal but the Tribunal was not an Estate-duty authority. Existing officers of the Income-tax Department were appointed as corresponding officers.


(Comtd....56)
for the administration of Estate-duty. Income-tax officers of class I and class II service were appointed as Asstt. Controller of Estate-duty. Inspecting Assistant Commissioners were appointed as Deputy Controller of Estate-duty and Commissioners of Income-tax as Controllers of Estate-duty. Qualifications of different categories of valuers were fixed by the Board as also a scale of charges for their remuneration. The Board could transfer assessment of an estate from one authority to another. But in such cases the accountable person had a right to demand that before any order imposing the duty was passed he should be heard. The Estate-duty Act was, however, removed from the statute book by the Finance Act 1955.

The Wealth-tax Act, 1957

This Act received the President's assent on 12.9.1957 but came into effect from 1.4.1957. Subject to other provisions of the Act for every financial

53. R. Kamoar 14 ITR 10.

(Contd....57)
year Wealth-tax was charged in respect of the total wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the prescribed rates. The net wealth at the valuation date is arrived at by computing the aggregate value of the assets belonging to the assessee and also those required to be included in these assets under some provision of the Act and deducting therefrom the debts owed by the assessee. The charge is subject to the general exemptions enumerated in section 5.

The Wealth-tax authorities are quite same as for Income-tax. There are Wealth-tax Officers, Appellate Assistant Commissioners of Wealth-tax, Inspecting Assistant Commissioners of Wealth-tax and Commissioners of Wealth-tax. At the top the administration of Wealth-tax Act also is looked after by the same Board which is meant for Income-tax. The constitutionality of the Act in so far as it levies tax on a Hindu Undivided Family came up for consideration in several cases.  

Section 3 of the Act levying tax on net wealth

54. Companies were exempted from the levy of Wealth-tax by the Finance Act, 1960 w.e.f. 1.4.1960. However levy of Wealth-tax was revived in a limited way by the Finance Act, 1983 w.e.f. 1.4.1983.
of Hindu undivided family has been held to be intra 
vires the powers of Parliament. \(^56\)

**Gift-tax Act, 1958.**

The Gift-tax Act 1958 received the 
President’s on 15.5.1958 and came into effect from 
1.4.1958. The gifts liable to be taxed comprise those 
made during the previous year other than those made 
before 1.4.1957. \(^57\) The Parliament’s competence to 
legislate for a tax on gifts rests on entry no. 97 of the \(^\text{II} \) 
Union list read with article 243(2) of the Constitution 
of India. \(^58\) Gift-tax is not a tax on property as such. It 
is an exercise upon the use made of the property upon 
the exercise of the privilege of transmitting title by 
gift: \(^59\) The Gift-tax authorities are: Gift-tax Officer, 
Appellate Assistant Commissioner of Gift-tax, Inspecting 
Assistant Commissioner of Gift-tax, Commissioner of 
Gift-tax, Directors of Inspection, and the Board as 
mentioned earlier. Besides there are Inspectors of 
Gift-tax. These authorities correspond to the similar

\(^56\) Banarsi Das V. WTO (1965) 56 I.T.R. 224 (S.C.)
\(^57\) Jupudi Sesharatnam V GT0 (1960) 38 ITR 93.
\(^59\) Mst. Gaimdi V.Union of India(1964) 54 ITR 632

(Comtd....59)
authorities under the Income-tax and Wealth-tax Acts and have similar powers and jurisdiction.

In fact, usually, an Income-tax Officer in India is also the Wealth-tax Officer and Gift-tax Officer in respect of the assesses under his jurisdiction. Similarly the appellate and inspecting authorities upto the top, exercise complimentary powers and functions and have complimentary jurisdiction. Separate postings at the assessment level are made under the Estate-duty Act. This is because of two reasons. Firstly, the Estate-duty cases under one Commissioner's charge are sufficient for one assessing officer to have jurisdiction upon. Secondly, work of assessment under the Estate-duty Act is comparatively specialised. It can better be looked after by one officer exclusively. If needed, however, there can be more than one assessing officers under one Commissioner's charge. There are, however, no exclusive officers usually posted for Estate-duty purposes at the appellate, inspecting and administrative levels. The reason is same. Span of control will be too short, if one Deputy Controller of Estate-duty is

(Comtd....60)
Looking after one or two Assistant Controllers of Estate-duty. This will be a wastage of manpower. More so, at the Commissioner's level and at the appellate levels. One could agree that Estate-duty cases could be centralised in a few Commissioner's (Controller's) charges. But then the problem of dichotomy of jurisdictions would have arisen. Thus what is in vogue is the best solution. Nonetheless now that the Estate-duty Act has been repealed this discussion remains only of academic importance.

One wonders as to what is the actual necessity of having these three direct-taxes. The answer is simple. These Acts play a supporting role for better implementation of the Income-tax Act. If Mr. X earns ten lac rupees in a particular year he pays Income-tax thereupon, alright. But, he, instead of reinvesting and generating extra income thereupon, gifts it to somebody. Income-tax Act is helpless. But the Gift-tax Act comes into play. Similar is the case

(Comtd....61)
with the Wealth-tax Act and Estate-Duty Act. These not only ensure levy of proper tax but also act as deterrent against tax-evasion instinct. Lately, it was, however, found by our welfare stage that the provisions of Estate-duty were not so productive in the totality of the circumstances. The Act was, therefore repealed as mentioned above.

In the next chapter we will talk about in detail, the organisation and functioning at the apex of Direct Taxes administration after coming into effect of the Income-tax Act, 1961 under which the Department is still being governed.