Chapter-1

Introduction
1.1 General

In the modern Democratic societies where means of production and earning incomes, profit and gains are in the hands of individuals, taxes on income have assumed more importance than ever before, because of the multifarious roles that taxation on income and wealth have to perform. At one time the only role or the main role, any of taxation was to raise the funds for the government to meet its expenditure. The modern Indian income-tax had its origin in 1860 as a temporary (five years) levy on income above a certain limit to meet the cost to the East India Company to suppressing the “Mutiny” of 1857. But today taxation may be or/ and is utilized as an instrument for redistribution of income for social justice, economic growth (without which there cannot be any social justice), inducement for personal and corporate saving, channelization of funds into productive investment, acceleration of industrial growth, development and industrialization of rural area, etc.

1.2 Income: Meaning and Scope

‘Income’ in common language means profits and gains earned by a person under the safety, security and stability provided by the Government. Under section 2(24) of income tax “Income” includes:

1 Profit and gain

2 Dividend

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(iii) Voluntary contributions received by a trust created wholly or partially for charitable or religious purpose or by an institution established wholly or partially for such purpose or by an association or by a fund or by any university or by a hospital or other educational institute under different sub clauses.

(iv) The value of any perquisite or profit in lieu of salary taxable under section 17.

(v) Any special allowance or benefit other than perquisite.

(vi) Any allowance granted by the assessee either to meet the personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him.

(vii) The value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person.

(viii) The value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in different clauses of section 160.

(ix) Any sum chargeable to income tax under clause (ii), (iii), (iiiia), (iiib), (iiic), (iv), (v), (va) of section 28, and section 41, 59.

(x) Any capital gains chargeable under section 45.

(xi) The profit and gain of any business of insurance carried on by a mutual insurance company or by a co-operative society.
(xii) The profit and gain of any business (including providing credit facilities) carried on by a co-operative society with its members.

(xiii) Any winning from lotteries, cross puzzles, races including horse races, card games or other games of any short or from gambling or betting of any form or nature.

(xiv) Any sum received by the assessee from his employees as contribution to any provident funds or superannuation funds or any funds set up under the provision of the employees state insurance act, 1948 or any other funds for the welfare of such employee.

(xv) Any sum received under a key-man insurance policy including the sum allocated by way of bonus on such policy.

(xvi) Any sum referred to in section 56(2).

(xvii) Any sum of money or value of property referred to in section 56(2).

The words income has widest meaning. The Supreme Court of India in, Dooars Tea Co. Ltd. v CIT\(^2\) has held that the word “Income” is of the widest amplitude and it must be given its natural and grammatical meaning. The definition of the term “income” start with the words includes; the list is inclusive not exhaustive. The supreme court of India in CIT v Karthikeyan (G.R.)\(^3\) has held that the purpose of the inclusive definition is not to limit the meaning but to widen its net, and several clauses

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\(^2\) Dooars Tea Co. Ltd. v CIT\(\text{[(1962) 44 ITR 6 (SC)]}\)

\(^3\) CIT v Karthikeyan (G.R.)\(\text{[(1993)201 ITR 866 (SC)]}\)
therein are not exhaustive of the meaning of Income; even if a receipt did not fall within the ambit of any of the clauses, it might be still income, if its part takes of the nature of income.

Generally Speaking, the words “income” covers receipt in the shape of money or money’s worth which arises with certain regularity or expected regularity from a definite source. However, all receipts do not form the basis of taxation under the Act\(^4\). Broadly an analogy is drawn of a tree and the fruits of that tree. The tree symbolises the source from which one gets fruits which symbolizes “Income”.

The total income of an assessee cannot be computed unless we know his residential status in India during the previous year. According to the residential status, the assessee can either be:

(i) Resident in India; or

(ii) Non- Resident in India.

However, individual and HUF, if resident in India, will be either:\(^5\)

(a) Resident and ordinarily resident in India; or

(b) Resident but not ordinarily resident in India.

The meaning of total income shall be slightly different according to the residential status in India of an assessee and the incidence of tax shall also vary according to the residential status in India\(^6\).

1.3 Income Tax: object and definition

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\(^4\) Incomes Tax Act(1961)

\(^5\) Section 5(1) of Income-Tax Act

\(^6\) Section 5 of Income-Tax Act
Taxes, as it is said, are as inevitable as measles. Taxes are what even an honest citizen despises the most as human being by very nature is selfish. He would like to have first of all every good thing for himself and he would hardly like that the fruits of his labour are enjoyed by others and particularly by those whom he has no relationship. He will try his best to see to it that his hard earned money is not taken away by others forcibly whether it is by snatching or by the rule of law. But it is also a duty of the individual to save legally from payment of taxes so that the same may be available with him to make him and his dependents to be good and honourable citizens. On the other hand, the practical concept of taxation law is to realise the revenue by way of tax to the maximum. Therefore, the perception of the tax payer and tax collector are different. The tax payer spares no efforts in maximizing his profits and attracting the least incidence. The tax collector, on the other hand, tries to maximize revenue within the framework of law.

Just as every businessmen tries to maximize his profits by reducing the cost, he should also arrange his affairs in such a way, that he pays the least amount of tax. Thus the primary object of tax planning is to save the hard labours of the taxpayer in enjoying the fruits of his income and wealth to the maximum possible extent.

(i) Object & Need:

The required budget is collected through taxes; but nobody likes to part with his income whether hard earned or easily obtained. Some try to pay less tax by taking advantage of various loopholes in the law i.e. through tax avoidance while others do not
bother about the law at all and deprive the Govt. of its legitimate share of taxes illegally and fraudulently i.e. by way of tax evasion. Everybody tries how not to pay tax at all or pay as little tax as possible and, thus, tax avoidance or tax evasion arises. Tax avoidance and tax evasion both cause tax disputes; but the latter creates more vicious circle in the society through the generation of black money which results into unproductive expenditure through ostentatious living and that is why the Govt. looks at the activities of the tax evaders with disfavour and tries to put an end to these undesirable activities.

Tax avoidance is minimising the incidence of tax by adjusting the affairs in such a manner that although it is within the four corners of the taxation law but the advantage is taken by finding out loopholes in the laws.

(ii) Definition:

‘Income’\(^7\) in common language means profits and gains earned by a person under the safety, security and stability provided by the Government and ‘tax’\(^8\) implies the charge levied by the Government for the services it provides to the person.

Taxes can be defined\(^9\) as compulsory payments which individual citizens make directly on his total income and indirectly for services provided by the government. Each citizen will have his own doubts and reservation about what he regards as the

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\(^7\) Section 2(24) of Income-Tax Act, 1961
\(^8\) S.N.Nautial, T.S.Kasturi & K.D.Dwivedi, Settlement of Income-Tax cases, Page 1, Taxman(1980)
\(^9\) Section 2(43) of Income-Tax Act, 1961
excesses or deficiencies of government programmes, the spending thereon and about the distribution of the burden of the taxes which he pay for them. But for better or worse, the existing programme of expenditure and taxes at any time represents the consensus of national opinion as it is resolved through the entire process of the government.

1.4 Historical prospective of Income -Tax

Taxation, tax evasion, tax disputes and settlement thereof in some shape or the other have been in existence since the human beings started living in the colonies or groups; but tax evasion & tax disputes reached a glaringly vicious height during the Second World War period and afterwards (1936-46).

Tax evasion, at the beginning of the Second World War was only a trickle because at that time, honesty in public, personal and social life was still regarded as something to be proud of; but by the end of the world war and, thereafter, it became a flood. Production of goods became short and money became surplus, which resulted into the economy of license, permit and quota.

It gave chance to the unscrupulous persons to become rich overnight. Business houses earned huge profits which prompted the then Government to levy extra taxes by introducing the Excess Profit Tax Act, 1940 and the Business Profits Tax Act, 1947. However, the desired results could not be achieved. Thereafter, Taxation on Income (Investigation Commission) Act, 1947 was enacted providing high-powered machinery for investigating the cases of escapement of huge profits from taxation and getting the assessments of such cases revised.
Later on, in 1949, Section 8A of I.T. Act 1922\textsuperscript{10} was introduced in that Act for settlement of cases which were under instigation there under. However, with the Constitution of India coming into force w.e.f. the 26\textsuperscript{th} January, 1950, the Section 5(4) of the said Act and the procedure prescribed therein were found to be ultra-virus to Article 14 of the Constitution.\textsuperscript{11}

As several provisions of the Taxation on Income (Investigation Commission) Act, 1947 could not stand the test of constitutional validity, some amendments were also made in the Income-tax Act, 1922\textsuperscript{12} in this regard but they also failed to bring the desired result.

Evasion of Taxes continued unabated resulting in accumulation of unaccounted money, which rose to alarming proportions. Unrealistic rate of taxation, which was probably the highest in the world, added fuel to the fire in prompting evasion of taxes.

Various study groups and committees\textsuperscript{13} were set up from time to time to examine & suggest ways and means for bringing out unaccounted money to the mainstream for furtherance of the economy. Several schemes were introduced at periodical intervals for this purpose e.g. Voluntary Disclosure Schemes, Special Bearer

\textsuperscript{10} S.N.Nautial, T.S.Kasturi & K.D.Dwivedi, Settlement of Income-Tax cases, Page 1, Taxman(1980)
\textsuperscript{11} Suraj Mal Mohta & Co. v V. Shastri & Another; (1954) 26 ITR 1 (S.C)
\textsuperscript{12} S.N.Nautial, T.S.Kasturi & K.D.Dwivedi, Settlement of Income-Tax cases, Page 1, Taxman(1980)
\textsuperscript{13} Wanchoo Committee (1971) and other
Bonds etc. to induce the errant taxpayers & assesses to declare their unaccounted income & investments, but without any noteworthy success.

1.5  Development of Income Tax Laws:

The provisions of income tax are contained in the Income-Tax Act, 1961 which extend to whole of India and became effective from 1-4-1962(Section 1). This Act contains provision for determination of taxable income, determination of tax liability, procedure for assessment, appeals, penalties and prosecutions. It also lays down the powers and duties of various income-tax authorities.

Since the Income Tax Act 1961, is a revenue law, there are bound to be amendments from time to time in this law. Therefore, Income Tax Act has undergone innumerable changes from the time it was originally enacted. These amendments are generally brought in annually along with the Union Budget. Besides these amendments, whenever it is found necessary, the Governments introduce amendments in the form of Amendments Act and Ordinances.

References have been received by the Board from a large number of Tax-payers, especially from mofussil area, that the existing monetary limits for assigning cases to ITO’s and DCIT’s/ACIT is causing hardship to the taxpayers, as it results in transfer of their cases to a DCIT/ACIT, who is located in a different stations which increase their cost of compliance. The Board has considered the matter and is of the opinion that the
existing limits need to be revised to remove the above mentioned hardship.

An increase in the monetary is also considered desirable in view of the increase in the scale of the trade and industry since 2001, when the present income limits were introduced. It has therefore, been decided to increase the monetary limits as under

<table>
<thead>
<tr>
<th>Income Declared (Mofussil Area)</th>
<th>Income Declared (Metro Cities)</th>
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<tbody>
<tr>
<td>ITO</td>
<td>ACIT/DCIT</td>
</tr>
<tr>
<td>Corporate Return</td>
<td>Up to 20 Lac</td>
</tr>
<tr>
<td>Non-Corporate</td>
<td>Up to 15 Lac</td>
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The above instruction are issued in supersession of the earlier instructions and shall be applicable w.e.f. 1/4/2011.

1.6 **Income Tax: Settlement Commission**

The Government cannot get its rightful share of taxes to meet its expenditure and to carry on various development plans till the tax disputes are settled in appeals before the Income-tax Authorities or the Courts. Increasing number of appeals and prolonged litigation period worsens the matter more. Therefore, the Govt. always feels the need of some machinery which may decrease the burden of the appellate authorities/courts and eliminate the prolonged litigation and attendant uncertainty and hardship to the taxpayers and safeguard the interest of revenue
through its proper, steady and fair decisions on the complicated tax disputes without the time consuming technicalities of courts. The Income Tax Settlement Commission\textsuperscript{14} is the result of this necessity of the Government.

\textit{(i) General:}

The commission was established as a forum for mediation in place of litigation with the belief that the taste of truth did not lie in an adversarial system inculcating predisposition to fight the case the whole way through and a tendency of blinkered belief in the rightness of one’s cause. The commission has to adopt an alternative method of resolution to find the truth and apply the law not on the basis of diametrically opposite presentation on the same issue but by mediations and assisted negotiations. This implies moving the conflicting parties to a consensus rather than subjecting them to adversarial procedure inherent in regular administration of justice. In the proceedings before the commission, there are no adversaries but only parties to the settlement.

The establishment of Settlement Commission was a step to bring order to disorder and calm nerves and patience of both the Tax payer and administrator, yielding appreciable results on various accounts.

The high powered review group appointed by the Government for reviewing the functioning of the Settlement Commission from its inception has, therefore, rightly observed

\textsuperscript{14} Section 245A -245M of Income-Tax Act, 1961
that the “Settlement Commission has substantially achieved the objects contemplated by the Wanchoo Committee”\textsuperscript{15}.

A Direct Taxes Enquiry Committee, more popularly known as “Wanchoo Committee” was set up on the 2\textsuperscript{nd} of March 1970 mainly to look into the question of tax evasion and suggest some means of preventing it, which in its report submitted on 24\textsuperscript{th} of December 1971 under Chapter “Black Money and Tax Evasion” observed that the door for compromise with the errant tax payers should not for ever remain closed and recommended for setting up a “Direct Taxes Settlement Tribunal” for settlement of cases with the taxpayers.

The Committee strongly recommended that instead of coming out with Voluntary Disclosure Schemes, which failed to bring in the desired results, it was prudent to make provisions in the law to enable the errant taxpayers to settle their tax matters with the Government. To ensure that the settlement is fair, prompt and independent, it suggested a permanent high level machinery for administering the provisions of settlement, i.e. a separate body within the department to be called the Direct Taxes Settlement Tribunal initially with 3 members (to be increased later depending upon the workload) with the same status and emoluments as that of a Member, Central Board of Direct Taxes.

\textit{(ii) Wanchoo Committee recommendations}\textsuperscript{16}

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\textsuperscript{15} K.Srinivasan & D.C.Taneja, Law of Tax Settlement and Disclosures, page 3-5.

\textsuperscript{16} K.Srinivasan & D.C.Taneja, Law of Tax Settlement and Disclosures, page 3-5.
The Wanchoo Committee was strongly opposed the idea of the introduction of any general scheme of voluntary disclosure. A disclosure scheme was considered by it to be “an extra ordinary measure, meant for abnormal situations, such as, after a war or at a time national crisis”. According to the committee, frequent resort to such a measure during normal times would shakes the confidence of the honest tax payers in the capacity of the government to deal with the law breakers and would invites contempt for its enforcement machinery. All the earlier scheme tried by the government in 1951 and 1965 were ineffective turning out to be no more than opportunities for converting black money into white on a payment of a small amount of conscience money. The committee was convinced “that any disclosure scheme would not only fail to achieve the intended purpose of unearthing black money but would have deleterious effect on the level of compliance among the tax-paying public and on the morale of the administration”.

This, however, the committee observed, did not mean that the door for compromise with an errant tax-payer should ever remains closed. “In the administration of fiscal laws, whose primary objective is to raise revenue, there has to be room for compromise and settlement. A rigid attitude would not only inhibit a one-time tax evader or an un-intending defaulter from making a clean breast of his affaires, but would also unnecessarily strain the investigational resources of the department in the case of doubtful benefit to revenue, while needlessly proliferating litigation and holding up collections. We would, therefore, suggest
that there should be a provision in the law for a settlement with
the tax-payer at any stage of the proceedings. In the United
Kingdom the ‘confession’ method has been in vogue since 1923. In
the U.S. law also, there is a provision for compromise with the tax-
payer as to his tax liabilities (section 7121 of U.S. Internal Revenue
Code, 1954). A provision of this type facilitating settlement in
individual cases will have this advantage over general disclosure
schemes that misuse thereof will be difficult and the disclosure
will not normally breed further tax evasion. Each individual case
can be considered on its merits and full disclosure not only of the
income but of the modus operandi of its build up can be insisted
on, thus scaling off chances of continued evasion through similar
practices”.

The committee made the following recommendations
accordingly as one of the important “measure for unearthing black
money”.

1) All statements might be entrusted to a separate permanent
   body within the department, to be called the Direct Taxes
   Settlement Tribunal.

2) The Tribunal should proceed with the petition filed by a
tax-payer only if the department raised no objection to its
   being so entertained.

3) Once a case was admitted for adjudication, the Tribunal
   should have jurisdiction over it. It should no longer be
   open to the tax-payer to withdraw the petition.

4) The Tribunal should have the power to investigate cases
   by itself or, in the alternative, to have investigation carried
out on any specific point, or generally, in any case through
the Income-Tax Department.

5) The quantum of the penalty and interest payable by an
assessee should be in the direction of the Tribunal. Similarly, the Tribunal might also, in its discretion, grant
immunity from criminal prosecution in suitable cases.

6) The award would be binding both on the petitioner and on
the department. The application of its decisions on
question of law would, however, be confined to the cases
under settlement and would not in any way interfere with
the interpretation of law in general. No appeal would lie
against the decision of the Tribunal by the petitioner or
the Department, whether on question of fact or Law.

Shri R C Padhi, one of the members of the Committee who
had been Chairman of the Central Board of Revenue, did not
support the above proposal on the ground that it was not
materially different from the earlier voluntary disclosure schemes
which were, in his view, disastrous failures. In this connection he
mentioned that the Income-Tax Investigation Commission’s
experience between 1947 and 1954 was also that no assessee had
come forward with a full disclosure to start with, and the
settlements that the commission made were no different materially
from the other investigation cases from the point of view of either
the complexity of investigation or the degree of cooperation
offered by the assessee to facilitate the investigation.

Shri S. Parkash Chopra, another member of the Direct Tax
Enquiry Committee, also recorded a minute of dissent. He was of
the opinion of that all settlements should be entrusted to the commissioners of Income-Tax in respect of their charges and that *ad hoc* tribunals could be constituted with a senior commissioner from a different charge, from time to time, to deal with complicated cases. He did not consider formal hearing necessary for this purpose, which might be served equally well by discussions with the concerned assessee, in *camera*.

The Government accepted the recommendations of the Committee in this regard and the Taxation Laws (Amendment) Bill, 1973\(^{17}\) proposed the insertion of Chapter XIXA in the Income Tax Act, 1961. The Select Committee of the Parliament proposed some changes and the recommendations were accepted by the Government including the changes that the appropriate nomenclature of the proposed settlement body should be ‘Income Tax Settlement Commission’. Ultimately, Chapter XIX-A entitled ‘Settlement of Cases’; was inserted by Taxation Laws (Amendment) Act\(^{18}\), 1975 with effect from April 1, 1976.

Initially, the Principal Bench of the Settlement Commission was established at New Delhi in 1976 and then additional Benches in Kolkata, Mumbai, and Chennai were opened. And more Benches are likely to be created at other places in near future. The Principal Bench consists of a Chairman and two other members and the other Benches consist of a Vice-President and two other members.

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Each Bench is assisted by a Secretary and his allied staff and a Director of Investigation, Additional Directors and allied staff.

(iii) New Concept:

“Settlement” has not been a new concept in tax legislation as many would believe. In U.K., it has been in vogue since 1923 as “Confession Method” and in U.S.A. it was in practice since 1954 as “closing agreement.”

In the present day set up, there has to be room for give and take, forgive & forget and live and let live policy. The judiciary, more often than not, takes too long to decide a case which indirectly benefits the culprit. Though a section of taxpayers are to be blamed for wilful attempt of avoiding payment of rightful share of taxes to the exchequer, it is also equally true that some of the assessments are made at unrealistic and abnormal figures based on wild estimates and pure guesswork.

There is always a hide and seek game between Taxation and Tax evasion. The tax evaders cannot keep their savings because of the eagle’s eyes of the taxmen and elimination of tax-evaders cannot be a consolation for the country and its policymakers. Therefore, to bring the errant tax payers to the main stream of tax payers and to safe guard the interest of the revenue as well, the govt. preferred the settlement machinery which, truly speaking, is based on Gandhi’s doctrine of compromise and forgiveness.

The Settlement Commission affords opportunity to both the classes of assesses - errant as well as the innocents to make amend for their mistake and to seek just and proper redressal of their
grievances by making full and true disclosures of their income and also nature and circumstances of their cases.

(iv) Object:

The main objective of setting up Settlement Commission is to create a statutory body for proper and steady decisions in difficult and complicated cases under the Income and Wealth Tax Acts, eliminating prolonged litigation and attendant uncertainty and hardship to taxpayers while at the same time safeguarding the interest of revenue. It is open to a person, as defined in Clause (9) of Section 2 of the Indian Income Tax Act, 1922 and Clause (31) of Section 2 of the Income-tax Act, 1961, whose case is pending as on the date of his application for or in connection with an assessment or reassessment before an Income Tax Authorities defined u/s 116 of the I.T.Act.

To a common man, the expression ‘Settlement’ means some type of agreement connected with movable or immovable property. In legal parlance, the word ‘settlement’ embraces any disposition, trust covenant, agreement or transfer of assets; but the ‘settlement’ conceived in Chapter XIXA is something different. It means the settlement of income tax cases pending for or in connection with assessment/reassessment of income.

It is quasi judicial body with unique features of its functioning. Some of the unique features of the functioning of the Commission may be noted as under:

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(i) This is the only institution independent of a Tax Administration Department to settle tax liability totally and finally to bring quietus to a dispute.

(ii) All proceedings before the commission are transparent to the effect that admissions of a case to be processed with for settlement as well as the final terms of settlement are set out and pronounced in the court.

(iii) The commission is empowered to grant immunity from any offence under the Direct Taxes Acts or under any other Central Acts and also to grant immunity from imposition of penalty under the Income Tax and Wealth Tax Acts. The Commission can waive interest chargeable under various sections of Income Tax and Wealth Tax Acts.

(iv) All proceedings before the commission are confidential in the course of statutory arbitration for settlement.

(v) The order of the Commission is subject to only judicial review in terms of Articles 136 and 226 of the constitution.

(vi) The constitution of the Commission is by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in problems relating to direct taxes and business accounts, has been specially laid down in the statute itself.

(v) Utility:
It provides an assessee an opportunity to come before the Settlement Commission and make true and complete disclosure of his income and wealth and start a new chapter in life.

The setting up and functioning of Settlement Commission drew sharp reaction from all quarters including the Apex Court; but whatever may have been the views, reactions, aspersions, reservations or criticisms, the utility of Settlement Commission in settling complicated tax matters in the last about 35 years cannot but be appreciated.

It has done commendable service to both the exchequer and the taxpayer by disposing off a number of cases effectively and amicably which would have otherwise been litigated for a fairly long period, thus, blocking collection of rightful taxes to the nation and causing wasteful loss of time, energy and money in appeals and counter appeals. Though it appears theoretically wrong to afford concessions to the errant and evasive taxpayers, the nation cannot afford to be very rigid in this regard.

(vi) Demerits:

There is no time-limit for settlement of cases. The Income-tax Act, 1961 has provided various time-limits for completion of assessments/re-assessments/rectification of mistakes or amendments etc. But there was no time-limit for Settlement Commission for disposal of the pending cases.

The Commissioner of Income-tax is required to submit the requisite/detailed report, as called for, by the Settlement Commission within 45 days (120 days prior to 01.07.1995) of the

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20 CIT v B.N. Bhattacharya & another; 118 ITR 461 (SC)
receipt of communication from the Settlement Commission but the required reports are not submitted well in time.

1.7 Important Case Laws relevant to the Settlement Commission

1.7.1 Waiver of Interest / Penalty

Dr. D.K. Mohan Rao v CIT\textsuperscript{21}

In this case, the decision of the Special Bench of the Settlement Commission in Anjum Mohammed Hussein Ghaswala\textsuperscript{22}, was upheld and the order of the Settlement Commission, that it had no power to consider the request of the petitioner for the waiver of interest, was held not to be legally sustainable in law. The Settlement Commission was directed to consider the application filed by the petitioner for reduction or waiver of interest u/s 234A, 234B & 234C of the Act on the merits of the case and in the light of the aforesaid decision.

Ashwani Kumar Aggarwal v CIT\textsuperscript{23}

Section 245F (7) gives the Settlement Commission powers to regulate its own procedure but there is qualifying clause that these powers are 'subject to the provisions of this Chapter'. It would thus appear that the Settlement Commission has the authority to regulate its own procedure and the procedure of the Benches of the Commission in all matters arising out of the exercise of its powers or discharge of its functions but this has to be subject to the

\textsuperscript{21} Dr. D.K. Mohan Rao v CIT, 241 ITR 94 (Mad), 103 Taxman 39 (Mad)
\textsuperscript{22} Anjum Mohammed Hussein Ghaswala v CIT, 230 ITR (AT)1
\textsuperscript{23} Ashwani Kumar Aggarwal v CIT, ITSC (Special Bench), 195 ITR 861 (1992)
provisions of Chapter XIXA. That being the position, it is difficult to appreciate the arguments that section 245F (7) read with section 119(2) (a) gave to the Settlement Commission the powers to issue orders, instructions or directions in respect of any 'class of incomes' or 'class of cases' whether to itself or to other income tax authorities.

As long as an applicant who has come to the Settlement Commission falls within the ambit of 'class or incomes' or 'class of cases' in respect of whom the CBDT has issued orders, instructions or directions by exercising its authority under section 119(2) (a), he will not be denied the benefit of such instructions, etc and, will therefore, not be worse off than other persons who may not choose to come to the Commission. This perhaps also explains why in section 245D (6), even after the deletion of the powers of other income tax authorities with effect from 1.4.1989, to waive or reduce interest chargeable under sections 234A, 234B & 234C the word 'interest' has still been retained. Additionally, the settlements u/s 245D (4) made after 1.4.1989 may also cover assessment years prior to 1989-90. Hence, the word 'interest' occurring in section 245D (6) has to be retained, even if it is taken that the Income tax authorities do not have the power to waive or reduce interest chargeable under section 234A, 234B & 234C for and from assessment year 1989-90. Thus, the retention of the word 'interest' in section 245D(6) by itself cannot lead to any inference, one way or another in regard to the power to waive or reduce interest for and from the assessment year 1989-90. Thus, there is no scope for the Commission to exercise its statutory powers to
reduce or waive interest chargeable u/s 234A, 234B & 234C for the assessment year 1989-90 and onwards except in those cases which the 'class of cases' or 'class of incomes' covered under the instructions, directions, etc. issued by the CBDT.

Anjum Mohammed Hussein Ghaswala & Others\textsuperscript{24}

\((a)(i)\) Whether the Special Bench of the Settlement Commission was correct in law in holding in the case of Ashwani Kumar Aggarwal\textsuperscript{25}, that the Settlement Commission is not vested with the power to reduce or waive the interest, chargeable u/s 234A, 234B & 234C of the IT Act, 1961, in any case, for the assessment years 1989-90 and onwards.

The decision of the Special Bench to this question was in negative. It was held that it is due to the fact that the Special Bench, which decided Ashwani Kumar Aggarwal's case founded its decision mainly with reference to the issue of instructions u/s 119(2) (a) and on the question whether a "case" would constitute a "class of cases". It had in fact balked the aspect of the legislative intent of the parliament as evidenced in the re-introduction of the word "interest" in section 245 D (6) and by the amendments to section 119(2) (a) removing the rigidity inherent in sections 234A, 234B & 234C. This relaxation of the provisions of sections 234A, 234B & 234C is a major factor to be considered while laying down

\textsuperscript{24}Anjum Mohammed Hussein Ghaswala & Others\textsuperscript{24} 5/XIII/59-63/94-95/IT ITSC (Special Bench), Order dated 12.12.1997

\textsuperscript{25}Ashwani Kumar Aggarwal v CIT, ITSC (Special Bench), 195 ITR 861 (1992)
the terms of settlement u/s 245 D(6) read with 245D(4). In the light of the principles of statutory interpretation and the plethora of judicial pronouncements referred ante.

Decision in case of Ashwani Kumar Aggarwal\textsuperscript{26} was not correct in so far as the issue was decided on the basis of instructions issued u/s 119(2)(a). Settlement Commission can reduce/waive the statutory interest, without taking recourse to the Board's Public Press Release and Board's Circular. Accordingly, the earlier Special Bench had reached an untenable proposition providing for a subsidiary role to the Settlement Commission and vesting the initiative with the Board and its subordinate authorities, in the matter of reduction/waiver of the statutory interest.

(ii) If the answer to (i) is in the negative whether the order of the Special Bench will be prospective application only or whether the past cases where reduction/waiver has not been considered may now be reconsidered on the basis of miscellaneous application in each case on its merit.

Where orders u/s 245D(4)\textsuperscript{27} were passed, without considering on merits the applicants request for reduction/waiver of interest u/s 234A, 234B and 234C\textsuperscript{28} on requisite application being filed in those cases, these may be examined with reference to

\textsuperscript{26}Ashwani Kumar Aggarwal v CIT, ITSC (Special Bench), 195 ITR 861 (1992)

\textsuperscript{27}Section 245A -245M of Income-Tax Act, 1961

\textsuperscript{28}Section 234A,234B & 234C(interest payable by/to) of Income-Tax Act, 1961
the facts and circumstances of each case and where the grant of any relief is justified such relief may be granted.

(b) Alternatively, since as per the mandatory provisions of section 245F (1) the Settlement Commission shall have "all the powers which are vested in an Income tax authority under this Act", including the Central Board of Direct Taxes under section 116(a) whether the Settlement Commission can on its own prescribe the 'class of income' or 'class of cases' in which the interest under section 234A, 234B & 234C can be reduced or waived?

It was held that the Settlement Commission need not prescribe guidelines and principles relating to the relaxation of the provisions of sections 234A, 234B & 234C in respect of any 'class of income' or 'class of cases'.

(c) (i) Can the law as laid down by the Commission in Gulraj Engg. Construction Company and Others reported be applied retrospectively in cases decided prior to the date of the order of the Commission, where the order stipulated that interest shall be charged in accordance with law?

As the decision of the Special Bench in the case of M/s Gulraj Engg. Construction Company and Others had already been questioned in SLPs filed before the Supreme Court under Article 136 of the Constitution of India and in the writ application under Article 226 of the Constitution of India filed before the Gujarat

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High Court and as the matter was sub-judice, the Special Bench refrained from answering this question.

(c) (ii) Are the different Benches bound to consider the cases of the persons or classes of persons falling within the circulars and instructions issued by the CBDT from time to time relaxing the provisions of Chapter XVII-F, including the instructions contained in the order passed u/s 119 (2) (a) in F. No. 212/495/92 IT(A-II) dated 2.5.94 and in F. No. 400/234/95 IT(B) dated 23.5.1996 that cases decided otherwise only on the ground that Board had not issued the instructions relaxing the said provisions should now be reviewed even in the cases decided by them before the issue of this order? The answer to this question was held to be in the negative.

1.7.2 Conditions u/s 245E for Reopening of Completed 'Cases'

CIT v Paharpur Cooling Towers Pvt. Ltd.30

The applicant filed an application for settlement for assessment year 1975-76. The Commissioner had stated that he had no objection to the processing of the application by the ITSC. Thereafter, the applicant filed a Statement of Facts indicating enhanced value of opening stock, disclosed by it and requested that the enhanced valued be appropriately spread over five earlier assessment years, also and for that purpose, it would agree to reopening of assessments for those years. The Settlement Commission, holding by majority that it had jurisdiction to do so reopened the earlier assessments and also passed orders directing that penalty proceedings pending for those years be dropped.

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30 CIT v Paharpur Cooling Towers Pvt. Ltd. 219 ITR 618 (SC)
The Supreme Court, after examining the entire material set aside the order of the ITSC to the extent it had waived the penalties for earlier years (i.e 1971-72 to 1974-75).

It was held that Commission had not only to act in accordance with the provisions of law but that its jurisdiction was limited to matters covered by the application before it. Once an application is admitted in respect of specific pending case, the Commission takes over all proceedings relating to that case only. Section 245E\textsuperscript{31} empowers it to reopen completed proceedings connected with the case before it but such power is circumscribed by the requirement that such reopening was necessary for proper disposal of the case pending before it. Two further limitations on this power are:

\textit{a)} Such reopening has to be with the concurrence of the applicant.

\textit{b)} It cannot extend beyond 8 years from the year to which the settlement relates. In essence, reopening of completed proceedings is not for the benefit of the assessee but in the interests of revenue. This section cannot be read as empowering the Commission to do indirectly what cannot be done directly.

In the present case, even the applicants' request was for a limited purpose of spread over of enhanced value of stock and not a concurrence to reopen the entire assessment & penalty proceedings relating to those earlier years which were not before the Commission. Accordingly, partial set aside of Commission's order was ordered.

\textsuperscript{31} Section 245E of Income-Tax Act, 1961
1.7.3 Settlement of Cases Under Section 245 D (4)

Mrs Sumati Dayal\(^{32}\) v CIT

The main point in this case is that in respect of cash credits, burden of proof is on the assessee to prove that amounts credited in the accounts did not represent income. The applicant, who as dealer in art pieces had shown income from horse-race winnings in two consecutive accounting years. The ITO did not accept this and made addition u/s 68 which was confirmed by the Appellate Assistant Commissioner. Thereafter, the assessee approached the Settlement Commission. The Settlement Commission also took the view that the claim of winnings in races was false and what were passed off as such winnings really represented the appellant’s taxable income from some undisclosed sources.

The Supreme Court also agreed with the Settlement Commission saying that after considering the surrounding circumstances and applying the test of human probabilities the Commission had rightly concluded that the assesses claim about the amount being her winnings from races was not genuine.

Shriyans Prasad Jain\(^{33}\) v ITO

The appellant was appointed as the Officer in Charge of 'DCPM' by an order dated 11.10.1943. His salary was fixed at Rs. 4000/- per month. The order of appointment further stipulated that the period of employment was 25 years and that in case his services were terminated before the expiry of the said period, he

\(^{32}\) Mrs Sumati Dayal v CIT, 214 ITR 801 (SC))

\(^{33}\) Shriyans Prasad Jain v ITO, 201 ITR 616 (SC)(1993)70 Taxman 290 (SC)
was to be paid compensation at the rate of Rs 40,000/- per annum for the unexpired period. The services of the appellant were terminated with effect from 30.11.1949 and an amount of Rs 7 lakh was paid to the appellant on that occasion. For the assessment year 1950-51 the appellant claimed that the said sum of Rs 7 lakh was not taxable in as much as it represented compensation for loss of employment.

The ITO did not agree with the submission and included the said amount in his income. On reference, the High Court held that the said sum represented compensation for loss of office and was, therefore, not taxable. On 11.12.1956, the Government of India constituted a Commission of Inquiry to look into the affairs of certain companies including 'DCPM'. The Commission also dealt with the payment of Rs 7 lakh to the appellant. The Commission questioned about period of employment and the provision about the payment of compensation for the breach that found place in the impugned letter of appointment dated 11.10.1943 and held that, that was an afterthought as those terms did not appear in the original contract. The scheme to defraud the exchequer by those ingenious devices was devised later and the impugned letter was forged and antedated in furtherance of that scheme. On the findings of the Commission, a notice was issued by the revenue calling upon the appellant to explain why his assessment relating to the assessment year 1950-51 be not reopened on the basis of the information which had come into possession of the department.
The ITO completed the assessment on 30.7.1977. The appellant thereafter approached the Settlement Commission by way of an application under Section 245C of the Act. The Commission held that the amount of Rs 7 lakh received by the appellant was of a composite character. It apportioned the said sum into Rs 2 lakh representing the compensation for loss of employment (not subject to tax) and Rs 5 lakh taxable under section 7 of the 1922 Act. Held that in the instant case, the Settlement Commission rejected the very existence of the letter of appointment dated 11.10.1943, relying substantially upon the report of the Commission of Inquiry. It commented upon the unusual nature of the stipulations with respect to the period of employment and compensation for premature termination contained therein. It also stressed the conduct of the appellant in suppressing the said letter from the Commission as recorded in the Report of Justice Vivian Bose Commission. The Settlement Commission was of the opinion that though the appointment of the appellant was with effect from 1.4.1943, the impugned letter containing the alleged terms and conditions of employment was strangely enough dated 11.10.1943 - nearly six months later- and further that while there was no letter informing the applicant that his services would no longer be required after 30.11.1949, there was the letter of 14.2.1950 agreeing to pay compensation. That too was somewhat strange, said the Commission.

It also noticed the close relationship between the appellant and the persons controlling the company (DCPM) and opined that the appellant occupied a special position in the company. Though
he was styled as an employee, he was in fact a part of the management.

In short, the Commission not only relied upon the findings of Commission of Inquiry but also gave several other reasons in support of its finding. Further with respect to the objection regarding the relevance and binding nature of the findings recorded by the Commission of Inquiry, it was to be held that the findings recorded by the said Commission might not certainly be binding upon the appellant in proceedings under the Act but it was wrong to say that they did not constitute relevant material. This undoubtedly constituted relevant material. Before they were relied and acted upon, the appellant was given an opportunity to meet the same, it was idle to contend that findings recorded by a Commission manned by an eminent judge was of no evidentiary value. The said findings were recorded after an exhaustive inquiry and examination of the relevant records, account books and other proceedings of the Companies.

Further there was no force in the submission that as the genuineness of the letter had gone into in the original assessment proceedings and the finding was recorded in the appellants' favour, same could not be reviewed either in the assessment proceedings or by the Settlement Commission. So far as the Assessing Officer was concerned, admittedly, he did not refer to the said aspect. He did say that the said letter was produced before him but he did not say whether the letter produced before him was the original or a copy. So far as the AAC was concerned he merely observed in his order that 'there is on record of an agreement
dated 11.10.1943'. The genuineness of the said letter was not put in issue before him.

It was true that before the Tribunal the department sought to challenge the genuineness of the said letter but the said challenge was not allowed to be raised. It was, therefore, not correct to say that the genuineness of the letter was pronounced upon by the authorities in the original assessment proceedings.

Further in this appeal, the Court could not go into question of fact or review the findings of fact recorded by the Settlement Commission. No serious objection had been taken with regard to the apportionment of the amount of Rs. 7 lakh effected by the Commission. Indeed, no such objection could have been taken.

Once the letter of appointment was disbelieved, the Commission's finding in that behalf was perfectly justified. Therefore, the Commission was right in holding that a substantial portion of the said amount should be treated as taxable under any circumstance by virtue of explanation 2 to section.

**M/s Hooghly Mills Ltd**\(^3^4\) \(v\) CIT

The order of the Settlement Commission may be conclusive so far as the authorities under the Income tax Act are concerned and binding on the authorities under the Act but certainly the order passed by the Settlement Commission cannot travel beyond the provision of the Act and cannot bind the authorities under a different Act. The Settlement Commission cannot order Settlement

\(^3^4\) M/s Hooghly Mills Ltd \(v\) CIT, 62 Taxman 83 (Cal) 1992, 199 ITR 336 (Cal)
of surtax proceedings or waive penalties under any Act other than the Income-tax Act.

**Ouseph Mathew & Co**\(^{35}\) v **ITO,**

In this case, it was held that by a reading of Section 245D (8), for the purpose of this case, three aspects have to be taken note of. Firstly, in section 245D (8), after mentioning about the first part/clause and while referring to the second one, the word 'and' is used. Secondly if the intention of the legislature is to separate and de-link the second part/clause, then they would have very well dealt with the second part/clause by a separate sentence or a separate paragraph as in section 249D(9). Thirdly while construing the provisions of the Act\(^{36}\), if the words are plain and there is no ambiguity, then, the Courts have to go by the meaning conveyed under the provisions of the Act. Therefore, the words "for removal of doubts" would apply to both parts/clauses of sub-sections (8) of section 245D. Therefore, the order cancelling the registration of the firms by the Settlement Commission u/s 186(1) was held to be valid.

**Sushil Kumar Modi and others & Brishen Patel and others**\(^{37}\) v **State of Bihar & others**

In this case an application was made to the Income Tax Settlement Commission, Calcutta on behalf of the Income tax Department to re-open certain disposed off proceedings relating to

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\(^{35}\) Ouseph Mathew & Co v ITO, 240 ITR 668 (Ker)

\(^{36}\) Section 2(24) of Income-Tax Act, 1961

\(^{37}\) Sushil Kumar Modi and others & Brishen Patel and others v State of Bihar & others, 233 ITR 671 (Pat)
the assesses involved in the animal husbandry scam in terms of the provisions of section 245D(6) of the Income Tax Act, 1961. The Settlement Commission, however, had expressed its inability to deal with the request on the ground of pendency of certain proceedings in the High Court. On this issue, it was held by the Patna High Court:

(i) that the pendency of proceedings in the High Court would not stand in the way of the Settlement Commission taking action passing such orders under section 245D(6) as may be considered fit and appropriate and

(ii) that the power conferred on the Settlement Commission regarding entrustment of enquiry to the Commissioner of Income Tax under section 245D(3) is discretionary in nature.

1.7.4 Immunity from Prosecution

Bansal Tool Co.\textsuperscript{38} v ITO

Criminal proceedings are not competent where matter is pending before Settlement Commission.

Kewal Krishan Gupta\textsuperscript{39} v ITO

While an application for grant of immunity is pending before the Settlement Commission, the prosecution may be stayed.

Ashvin Kumar Vadilal Patel\textsuperscript{40} v S.Rajguru and Another

Section 245H of the Income-tax Act, 1961, which deals with the power of the Settlement Commission to grant immunity from

\textsuperscript{38} Bansal Tool Co. v ITO, 186 ITR 104 (P&H) (1990)

\textsuperscript{39} Kewal Krishan Gupta v ITO, 104 CTR 321 (P&H)(1992)

\textsuperscript{40} Ashvin Kumar Vadilal Patel v S.Rajguru and Another, 165 ITR 583 (Guj)
prosecution and penalty, includes immunity not only for offences punishable under the Income-tax Act but also for offences under the Indian Penal Code. However, the prosecution is not required to be stayed merely because an application u/s 245H is made and is pending. Till such application is granted, there is no immunity and merely because an application is made about the merits of which there is nothing before the court and regarding the merits of which the Criminal Court has no jurisdiction, the prosecution cannot be stayed.

Moreover, the power to grant immunity by the Settlement Commission is to be exercised sparingly. The Criminal Court cannot grant even temporary immunity by granting stay of prosecution. Therefore, until immunity is granted, the criminal prosecution need not be stayed.

**R.I. Chadha and Others**⁴¹ _v_ Income-tax Officer

In the light of section 245F of the Income-tax Act, 1961, it is patent that the Settlement Commission, during the pendency of proceedings before it, enjoys all the powers which are vested in an income-tax authority under the Act sub-section (2) makes it manifest that till the culmination of those proceedings, with the passing of an order under sub-section(4) of section 245D of the Act, it has exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under the Act in relation to that case. Sub-section (4) further makes it clear that the authorities under the Act, including the Commissioner and the Income-tax Officer, may continue to exercise their jurisdiction

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⁴¹ R.I. Chadha and Others _v_ Income-tax Officer, 168 ITR 591(P&H)
under the Act with regard to any matters other than those which are before the Settlement Commission but that too is subject to any direction by the Commission to the contrary.

In February, 1983, the assessee company moved an application under section 245C of the Act before the Settlement Commission for the settlement of its tax liability and all related matters in respect of the assessment years 1969-70, 1970-71 and 1978-79 to 1982-83. This application included a prayer under section 245H of the Act for the grant of immunity from prosecution under the Act or the Indian Penal Code or under any other Central Act for the time being in force. The Settlement Commission forwarded a copy of it to the Commissioner for his report and on receipt of the same with no objection allowed the application to be proceeded with. While the application was pending with the Commission, prosecution was launched against the assessee for false verification of returns u/s 276C and 277 of the Income-tax Act. An application u/s 245(2) of the Criminal Procedure Code was dismissed on a petition u/s 482\(^{42}\) of the Criminal Procedure Code; Held that in view of the provisions of section 245F, the Settlement Commission had exclusive jurisdiction to launch a prosecution against the assessee.

The Commissioner could not direct or authorise the filing of the complaint against the petitioners during the course of the pendency of the proceedings before the Settlement Commission.

\(^{42}\) Section 245(2) of Criminal Procedure Code, 1961
Shakti Metal Box and another v Union of India and Others

The Commissioner of Income-tax instituted a complaint under sections 276C and 277 of the Income-tax Act, 1961, against the petitioner-firm on the ground that it had concealed an income of Rs. 3 lakh while filing its return. The petitioner-firm claimed that they had filed a petition under section 245C of the Act before the Income-tax Settlement Commission, that the Settlement Commission had admitted the petition and the proceedings before the Commission were allowed to be proceeded with, that all the proceedings including the prosecution should be stayed and that the criminal complaint of the Commissioner should be quashed:

Held that, when the complaint was instituted, the Commission had not yet allowed the proceedings on the application of the petitioner to proceed further. In this situation, it could not be said that the Settlement Commission was seized of the matter when the prosecution was launched under the orders of the Commissioner.

There was no bar on the powers of the Commissioner to order the launching of the prosecution on the day the complaint was filed. While allowing the prayer of the petitioners to proceed with the application, the Settlement Commission did not give a direction for stay of the criminal proceedings. The mere allowing of the proceedings on the application of the petitioner by the

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43 Shakti Metal Box and another v Union of India and Others, 204 ITR 450 (P&H)

44 Section 276C & 277 of Income-Tax Act, 1961

45 Section 245C of Income-Tax Act, 1961
Settlement Commission did not operate as a bar to the prosecution already instituted under the orders of the Commission.

1.8 Objectives of the Present Study

The main objectives of the present study are as under:


2. Acquainting and summarizing the various causes, which have been found responsible for the tax evasion.

3. Enumerating the steps and appropriate suggestions, which may benefit for the settlement of disputes arising between tax payers and Income Tax Authorities?

1.9 Methodology

Doctrinal approach and articles of learned authorities will be helpful in this regard.

1.9.1 Data Collection:

The present study will be based on the secondary data which will be collected through internet and from various sources as detailed below:

1. Income tax Law-4th edition by Chaturvedi & Pithisaria V-4

2. Law of Income tax-9th edition by Sampat Iyengar’s

3. D. M. Harish on Income tax

4. Income tax by Kanga and Palkhivala

5. Current tax Reporters

6. Income tax Law 2005

7. Income tax Rule 2005
8. Income tax Reporters
9. Direct tax Circulars
10. Indian tax laws by A.N.Aiyar’s
11. Income tax in India by V.S. Sundaram’s
12. Taxman
14. Texpert (CD)
15. Income tax Law and Practice by Vinod K. Singhania
16. Law and Practice by Girish Ahuja

The other secondary data which will be collected through various sources i.e. Income-tax Reporter, Central Tax Reporter various newspapers viz. Economic Times, Business India etc, as well as from the office of Ministry of Finance, Report of comptroller and Auditor General of India.

1.10 Tentative Chapter Plan

The purpose of the current study is to specify the main causes which are responsible for the disputes between both the parties i.e. tax payers and the tax collecting agencies. Further, the researcher will highlight the various steps to improve the present condition which may be beneficial for policy makers, academicians and for the whole economy.

Chapter-1

It relates to ‘Introduction’ which will briefly hint at the concept of ‘income’ ‘tax’, need of taxation, tax disputes due to tax avoidance and tax evasion, Income-Tax Settlement Commission - its legislative the ground, main objective, the object of settlement, whether settlement .. a new concept, criticism of its functioning,
unique features of its functioning and above all, its indispensable utility in the present set up and circumstances.

Chapter-II

It will highlight the constitution, jurisdiction and powers of the Settlement Commission and incongruities and lacunae found therein and the changes required in law.

Chapter-III

It will contain the procedure for filing of an application before the Settlement Commission and its disposal along with relevant definitions.

Chapter-IV

It will deal with the provisions of interest, penalties, and prosecution under different circumstances.

Chapter-V

This chapter will deal with the Wealth-Tax and collection of Tax under the Act 1957.

Chapter-VI

This chapter will deal with the report of Comptroller and Auditor General of India.

Chapter-VII

Conclusion and Suggestion: This chapter as usual will include the conclusion of the whole study and also necessary suggestions in this regard.

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