

CHAPTER - II

HISTORICAL BACKGROUND, NEED &

SIGNIFICANCE OF APPEAL AND

APPELLETE FOURM.

- 2.1 Historical Background of Tax-Law
i.e. Income Tax.
- 2.2 Need for Appellete forum.
- 2.3 Provisions regarding Appeal.
- 2.4 Significance of appeal before Supreme Court of
India.

CHAPTER - II

HISTORICAL BACKGROUND NEED & SIGNIFICANCE OF
APPEAL AND APPELLATE FORUM.

INTRODUCTION :

The present chapter deals with historical background. The tax laws were introduced in the country by the British rule. The tax system was established by the rules for the whole country for the first time. The tax laws were developed gradually step by step with introduction of Licence tax, certificate tax and others. This development continued at the same pace. With the growth and development, a considerable enlargement of total tax structure was obvious. It encompassed large grouping of tax payer and tax collector namely Tax Authority of Govt. of India. Disputes were bound to be cropped up. For the settlement of these disputes, The Central Board of Direct Taxes was established Constitutionally to provide for deciding appeals from aggrieved parties. The aggrieved not being satisfied with decisions of the Central Board can have an excess to the Supreme Court.

2.1 HISTORICAL REVIEW :

The Direct Tax Laws are concerned with taxation of Income, wealth, gift and expenditure. The area of taxation is vast and it

provides rich potential for mobilising revenues. Before proceeding to the subject it would be relevant to review the historical background of one such direct Law that is the Tax on Income.

The growth and development of Income Tax as a measure of direct taxation in India can be dealt broadly under six heads :

- 1) Creation of charge.
- 2) Procedure for assessment.
- 3) Administration.
- 4) Super-tax.
- 5) Rates of Income-tax and Super-tax and lastly.
- 6) Returns to the Treasury.

1) CREATION OF CHARGE :

The first Income-tax Act in India was introduced in 1860 under the stress of financial difficulties consequent on the Mutiny of 1857 and it was enacted to be in force for a period of five years. Section CCXLIX ran that it shall take effect from the 31st day of July 1860, and shall continue in force until 1st day of August 1865 and no longer. It was framed on the lines of the United Kingdom Income-tax Act, 5 & 6 Vict. C. 35, 1842. Source of

income were enumerated under Schedules together with Rules under each Schedule. The Duties were charged under each compartment at low percentages of the income. The concept of the aggregate income from all source was not material, except for determining the minimum taxable limit. The taxes could be compounded during the first, second or third year after the commencement of the Act for a period of five, four or three years respectively. Agricultural income from lands above a rental value of Rs. 600 per annum was included into tax. This Act lapsed, as aforesaid, in 1865.

The tax was revived in 1867 in the form of a "license tax" on trades and professions on the basis of annual income. Government servants were not required to take out a license, but tax was deducted from their salaries. This technique of licensing was adopted for simplifying the tax levy, since difficulty was experienced in finding the requisite machinery to work the complicated Schedules of the Act of 1860, based upon the complicated English system. In 1868, the Legislature introduced what was known as "Certificate Tax", which was not materially different from the "license tax" of the previous year. A ceiling was fixed to the amount of the license tax or the certificate tax. Agricultural income was excluded from the "license tax" as well as from the "Certificate Tax".

In 1869, the certificate tax was converted into a general income-tax. Agricultural income was again brought under taxation. This Act was in force for one year and during the next four years, annual legislation was resorted to for levy of tax. The improvement in the financial situation by 1873 saw the abolition of income tax in that year.

The great famine of 1876-78 brought about the revival of direct taxation by the Act of 1877. On this occasion, it took the form of a license tax on the trader, combined with a cess on land, raised for the purpose of forming a famine fund from both these sources. This was a period when adaptation of the tax laws to suit local condition was considered necessary, and hence Local Acts were introduced in Bengal, Madras and Bombay, alongside of Central Act for the N.W.F.P. and the Punjab. In 1880, the various Local Acts were amended so as to do away with the divergence in the exemption limits prevailing in the province. These Acts continued with amendments till 1886. Between 1860 and 1886, there were as many as twenty-three tax enactments.

Acts II of 1886 was the first important landmark in the history of Income-tax in our country. This Act of 1886 was a great improvement on its predecessors. Its basic scheme, has by and large, endured to the present day. It introduced a definition

of "Agricultural Income" in almost the form in which it stands to-day and the exemption it granted in respect of agricultural income has continued to be a feature of all direct taxations since. This Act also contained an exemption in respect of payment for life insurance premium, subject to a limit of one-sixth of the income similar to the exemption prevailing to-day. It allowed compounding of taxes for a period of years, a legacy which is inherited from the past. It contained no detail provision for the computation of income as now, and it left to the Governor-General-In-Council the power to make rules for the purpose.

Under its scheme, the aggregate of income from the various sources was not a material concept, except for the determination of the of the minimum taxable limit. The sources of income and the rate of taxation at stated pias per rupee under each compartment were enumerated in a schedule to the Act. The said schedule was replaced in 1916, by a new schedule providing for enhanced rates of taxation by gradation. The Act of 1886, stood in force for 32 years till 1918.

The year 1918, was the second land mark in the history of the Indian Taxation. Act (vii) of 1918, was introduced recasting the entire tax-law. This Act was desired, inter alia to remedy certain inequalities in the assessment of indudal Tax payers

under the 1886 Act, introducing graduated rates. It also aimed at defining more precisely the method for calculating income and profits of various categories, absence of provisions concerning which lead to diversity in the assessing standards of the different provisions. The act introduces, for the first time, the scheme of aggregating income from all sources for the purpose of determining the rate. The tax levy was imposed in respect of the taxable income of the year of assessment, unlike on the income of the previous year, as obtained, generally, under the earlier Acts. The assessment was enumerated under six heads : (i) salaries, (ii) interest on Securities, (iii) income derived from house property, (iv) income derived from business, (v) income from derived, from other sources. The Act applied to all income "from whatever source it is derived if it accrues or arises or is received in British India or is, under the provisions of Act, deemed to accrue or arise or to be received in British India". A Schedule to the Act fixed the rates, varying from 4 pies in the rupee on the lower income ranges, to 12 pies in the rupee in the higher income ranges.

The Income-tax law came up for revision before the All-India Income Tax Committee 1921. As a result of the committee's recommendations, Act No. xi of 1922, came into being. Its importance

lies, in the fact that the administration of the Income-tax hitherto carried on by the provincial governments came hence to be vested in the central Government. Later, the Amending Act VII of 1939 brought considerable and far-reaching changes into the Act of 1922. Between 1922 and 1939, there were as many as twenty-Amending Acts.

It will be convenient to notice the 1939 and later legislations in a separated paragraph. Confining, for the moment, to the law between 1922 and 1939. The Act of 1922, like the 1918 Act, applied to all incomes "accruing, or arising, or received in British India" or deemed so to accrue, arise or be received. It marked an important change from the 1918 Act, namely by establishing the charge in the year of assessment on the income of the "previous year", instead of adopting the previous year's income merely as a measure of the income of the year of assessment. It incorporated in its provisions the Super-tax, which till then was being assessed as a separate tax first, by the Super Tax Act 1917, and later by the Super-Tax Act, 1920 made a departure by abandoning the system of specifying the rates of taxation in its own schedules. It left the rates to be enunciated by the annual Finance Acts, a feature which survives to the present day. It exempted from tax any sum received by a member of Hindu undivided family from out of the income of the family. It

enabled loss under one head of income to be set off against profit under any other head, so that the tax was chargeable only on the net income. It imposed on a successor to a business, liability to tax as though he himself had carried on the business through the previous year. On the other hand, it granted relief in respect of a business which had been assessed under the 1918 Act.

The Act VII of 1939 gave legal shape to the recommendations of an expert Income-tax Committee appointed in 1935. It marked a departure from the past, by bringing to charge the foreign income of "residents" in British India, wherever accruing or arising, notwithstanding that such income was not remitted into British India. In consequence, it had to introduce detailed provisions describing the circumstances in which the various units of taxation were to be regarded as "resident" in this country. It also created an intermediate class of assesses between "residents" and "non-residents", styled "resident but not ordinarily resident", the burden on whom is substantially less than on one who is "ordinarily resident". In respect of computation of income of an insurance business it enacted provisions in a schedule to the Act in place of Rules which had been separately framed under the Act before. It introduced provisions to check tax avoidance through the medium of :

i) Settlements and trusts,

ii) Receipt of income in the form of capital mainly through the

agency of private companies. (e.g. bonus shares, debentures, surplus after liquidation of the company).

iii) Transfers of assets to a non-resident.

iv) Sales-cum-dividend and

v) Bond-washing etc.

It granted to a business, for the first time, relief by way of carry forward of loss for a period of six years.

The drastic changes of 1939 did not bring about any lull in the Income-tax reform. Changes in the law became more or less an annual feature since. Between 1939 and 1956, as many as 29 Amendment Acts were passed by the Legislature, each of these amending Acts introducing several amendments, some of them being of far-reaching importance. These amendments, were too often framed without sufficient regard to the basic scheme upon which the Act originally rested. The amendments made in a frenzy of hurry were inaccurate in language and introduced a degree of obscurity, which made the working of the Act different for practitioners and Courts.

In 1947 the Taxation of Income (Investigation Commission) Act, 1947, was passed and it came into effect from 1st May 1947.

The preamble of the said Act stated.

"Whereas it is expedient, for the purpose of ascertaining whether the actual incidence of taxation on income is and has been in recent years in accordance with the provisions of law,

and the extent to which the existing law and procedure for the assessment and recovery of such taxation is adequate to prevent the evasion thereof, and to make provision for an investigation to be made into such matters.

The two tasks (i) of investigating into certain specific cases of tax evasion, and (ii) of reporting on the law then existing, were entrusted to the said Commission. The Commission's recommendations found place in the Income-tax (Amendment) Act, 1953 (25 of 1953), effective from 1st April 1952.

Then followed in 1953 the Taxation Enquiry Commission under the leadership of Dr. Jhon Mathai with wide terms of references. The commission's findings were given effect to from time to time, beginning with the Finance Act of 1955.

The Government, in consequence, referred the Act to the Law Commission in the year 1956 in order to recast the Act on logical lines and to make it intelligible and simple, without at the same time affecting the basic tax structure. The Law Commission after two years of labour sent up an admirable draft to the Government of the 26th of September, 1958. Meantime the Direct Taxes Administration Enquiry Committee headed by Shri Mahavir Tyagi had been appointed by the Government to consider measure designed to minimise the convenience to assesseees and to prevent evasion of

income-tax. This committee sent up its Report to the Government on the 30th of November 1959. The Government in its Ministry of Law and its Ministry of Finance considered the recommendations of the Law Commission and also of the Direct Taxes Administration Enquiry Committee and evolved a bill which was submitted to the Lok Sabha on the 24th April 1961. The discussions in the Lok Sabha lasted from the 27th April to the 1st May and the Bill was referred to a Select Committee on 1st May, 1961. The Select Committee sat on the Bill from 4th May, 1961, up to 7th August 1961, and its Report was presented to the Lok Sabha on 10th August, 1961. After important changes introduced by the Finance Minister, the Bill passed through both the Houses of the parliament and received the assent of the President on 13th September, 1961. On every aspect of the subject of income-tax, right from the filling of a return up to the date of collection of tax, this Act has made considerable changes and departures from the pre 1961 legislations.

After the passing of the Income-tax Act, 1961 (43 of 1961) Legislation has not remained stationary Changes, substantive and procedural, galore have been made by the Acts to meet the challenges from different quarters and to answer the developing needs of the nation. This list is exhaustive and therefore not enumerated here.

2.2 NEED FOR AN APPELLETE FORUM :

The legislation for taxation in each case provides for the settlement of disputes between the tax payers and the tax collector. The enactment for income, wealth, gift or expenditure may be ambitious arbitrary or adhoc and at the sometime may provide for precise interpretation or clarification or a justification or otherwise for an issue at conflict. There are number of areas where the dispute may arise between the tax payers and tax collector.

2.3 THE PROVISION REGARDING APPEAL :

The tax Law's provide for seperate chapter for appellete matters. The relavent provisions are as under.

a) INCDME TAX ACT 1961 CHAPTER XX

APPEALS AND REVISION

246 Appealleble orders

1) Subject to the provisions of sub-section(2), any assessee aggrieved by any of the following orders of an Assessing Officer (other than the Deputy Commissioner) may appeal to the Deputy Commissioner (Appeals) against such order.

a) an order against the assessee, where the assessee denies his liability to be assessed under this Act, or an intimation under

sub-section(1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments or any order of assessment under sub-section(3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed.

b) an order of assessment reassessment or recomputation under section 147 or section 150.

c) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections:

d) an order made under section 163 treating the assessee as the agent of a non-resident;

e) an order under sub-section(2) or sub-section(3) of section 170;

f) an order under section 171;

g) any order under clause (b) of sub-section(1) or under sub-section(2) or sub-section(5) of section 185 in respect of any assessment for the assessment year commencing on or before the 1st day of April 1992.

h) an order cancelling the registration of a firm under sub-section(1) or under sub-section(2) of section 186, in respect of any assessment for the assessment year commencing on or before the 1st day of April 1992.

i) an order under section 201;

j) an order under section 216 in respect of any assessment for the assessment year commencing on the 1st day of April 1988 or any earlier assessment year;

k) an order under section 237;

l) an order imposing a penalty under -

i) section 221 or

ii) section 271, section 271A section 271B section 272A, section 272AA or section 272BB.

iii) Section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989 in respect of any assessment for the assessment year commencing on the 1st day of April 1988 or any earlier assessment years.

2) Notwithstanding anything contained in sub-section(1), any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the commissioner (Appeals) against such order -

- a) an intimation or order specified in sub-section 1) where such intimation is sent or such order is made by the Deputy Commissioner in exercise of the powers or functions conferred on or assigned to him under section 120 or section 124,
- b) an order specified in clauses (a) to (e) (both inclusive) and clauses (1) to (1) both inclusive of sub-section(1) or an order under section 104, as it stood immediately before the 1st day of April 1988 in respect of any assessment for the assessment year commencing on the 1st day of April 1987 or any earlier assessment year made against the assessee, being a company.
- c) an order of assessment made after the 30th day of September 1984, on the basis of the directions issued by the Deputy Commissioner under section 144A.
- d) an order made by the Deputy Commissioner under section 154.
- e) an order imposing a penalty under section 271B or section 271BB.
- ee) an order made by a Deputy Commissioner imposing a penalty under section 271c, section 271D or section 271E.
- f) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A.
- ff) an order made by a Deputy Commissioner imposing a penalty under section 272AA.

g) an order imposing a penalty under chapter XXI by the Income-tax Office or the Assistant Commissioner, where such penalty has been imposed with the previous approval of the Deputy Commissioner under sub-section(2) of section 274.

h) an order made by an Assessing Officer (other than Deputy Commissioner) under the provision of this Act in the case of such person or classes of persons as the Board may, having regard to the nature of the cases, the complexities involves and other relevant consideration, direct.

3) Notwithstanding anything contained in sub-section(1) the Board or the Director General or the Chief Commissioner or Commissioner if so authorised by the Board, may by order in writing, transfer any appeal which is pending before a Deputy Commissioner (appeals) and any matter arising out of or connected with such appeal and which is so pending to the Commissioner (Appeal) if the Board or, as the case may be, the Director General or Chief Commissioner or Commissioner (at the request of the appellant or otherwise) is satisfied that it is necessary or expedient so to do having regard to the nature of the case, the complexities involves an order releavent considerations and the Commissioner (Appeal) may proceed with such appeal or matter, from the stage at which it was before it was so transferred.

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be re-opened or that he be re-heard.

Explanation : For the purposes of this sections,

a) "appointed day " means the 10th day of July, 1978, being the day appointed under section 39 of the Finance (No.2) Act 1977 (29 of 1977).

b) "Status" means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.

248. APPEAL BY PERSON DENYING LIABILITY TO DEDUCT TAX

Any person having in accordance with the provisions of sections 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies his liability to make such deduction, may appeal to the Deputy Commissioner (Appeal) or, as the case may be to the Commissioner (Appeal) to be declared not liable to make such deduction.

249 FORM OF APPEAL AND LIMITATION :

1) Every appeal under this Chapter shall be in the prescribed form and shall be verified in the prescribed manner.

2) The appeal shall be presented within thirty day or the following date, that is to say.

- a) Where the appeal relates to any tax deducted under subsection (1) of section 195, the date of payment of the tax, or.
- b) where the appeal relates to any assessment or penalty, the date of service of the notice of the notice of demand relating to the assessment or penalty.

Provided that, where an application has been made under section 146 for reopening an assessment, the period from the date on which the application is made to the date on which the order passed on the application is served on the assessee shall be excluded or

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

3) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (appeals) may admit an appeal after the expiration of the said period if he is satisfied that the applicant had sufficient cause for not presenting it within that period.

4) No appeal under this Chapter shall be admitted, unless at the time of filing of the appeal.

- a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or
- b) where no returned has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him :

Provided that, in a case falling under (b) and on an application made by the appellant in this behalf, the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause.

250 PROCEDURE IN APPEAL

1) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the applicant and to the (Assessing) Officer against whose order the appeal is preferred.

2)The following shall have the right to be heard at the hearing of the appeal --

a) the appellant, either in person or by an authorised representative:

b) the (Assessing) Officer, either in person or by a representative.

3) The Deputy Commissioner (Appeals) or as the case may be the Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.

4) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeal) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Deputy Commissioner (Appeals) or, as the case be, the Commissioner (Appeals).

5) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) may at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the ground of appeal. If the Deputy Commissioner (Appeal) or, as the case may be, the Commissioner (Appeals) is satisfied that the omission of the ground from the form of appeal was not wilful or unreasonable.

6) The order of the Deputy Commissioner (Appeals) or, as the case may be the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

7) On the disposal of the appeal, the Deputy Commissioner (Appeals) or, as the case may be, the commissioner (Appeals) shall communicate the order passed by him to the assessee and to chief commissioner or commissioner.

251. POWERS OF THE DEPUTY COMMISSONER (APPEALS) OR, AS THE CASE MAY BE, THE COMMISSIONER (APPEAL)

1) In disposing of an appeal, the Deputy commissioner (Appeal) shall have the following powers--

(a) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment; or he may set aside the assessment and refer the case back to the (Assessing) Officer for making a fresh assessment in accordance with the directions given by the Deputy commissioner (Appeals or, as the case may be, the commissioner (Appeals) and after making such further inquiry as may be necessary, and the (assessing) Officer shall thereupon proceed to make such fresh assessment and determine, where neces-

sary, the amount of tax payable on the basis of such fresh assessment;

(b) In an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) In any other case, he may pass such orders in the appeal as he thinks fit.

2) The (Deputy commissioner (Appeals) or, as the case may be, the commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation - In disposing of an appeal, the Deputy commissioner (Appeals) or, as the case may be, the commissioner (Appeals) may consider and decide any matter arising out of the proceeding in which the order appealed against was passed, notwithstanding that such matter was not raised before the Deputy commissioner (Appeals) or, as the case may be, the commissioner (Appeals) by the appellant.

B - Appeals to the Appellate Tribunal

252. APPELLATE TRIBUNAL

1) The central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the central Legal Service and has held a post in Grade I of that Service or any equivalent or higher post for for at least ten years.

Explanation - For the purposes of this sub-section, -

i) In computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;

ii) In computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office or the office of a member of a Tribunal or any post, under the Union or a state, requiring special knowledge of law after he became an advocate.

2-A An accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the chartered Accountants Act, 1949 (38 of 1949), or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or who has been a member of the Indian Income-tax service, Group A, and has held the post of commissioner of income-tax equivalent or higher post for at least three years.)

3) The Central Government may appoint one or more members of the Appellate Tribunal to be the president thereof.

4) The central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof.)

4. A) The central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.)

5) The senior Vice-president or a vice-president shall exercise such of the powers and perform such of the functions of the president as may be delegated to him by the president by a general or special order in writing.

253. A APPEALS TO THE APPELLATE TRIBUNAL

Any assessee aggrieved by any of the following orders :

a) An order passed by a Deputy Commissioner Appeals or, as the case be, a commissioner (Appeals)section 154 section 250, section 271,section 271 A or section 272A; or

b) -----

c) An order passed by a commissioner under section 263 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a chief commissioner or a Director General or a Director under section 272 (a)

2) The commissioner may, if he objects to any order passed by a Deputy commissioner Appeals or, as the case may be, a commissioner Appeals under section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

3) Every, appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the commissioner, as the case may be.

4) The Assessing Office or the assessee, as the case may be, on receipt of notice that an appeal against the order of the deputy commissioner Appeals or, as the case, may be, the commissioner Appeals been preferred under sub-section (1) or sub-section (2) by the other party, may notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross objections, verified in the proscribed manner, against any part of the order of the Deputy commissioner Appeals or as the case may be the commissioner Appeals and such memorandum shall shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3)

5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) Or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period.

6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall, in the case of an appeal made in or after the 1st day of June, 1992 irrespective of the date of

initiation of the assessment proceedings relating thereto, be accompanied by a fee of-

a) Where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is one lakh rupees or less, two hundred and fifty rupees;

b) where the total income of the assessee computed as aforesaid in the case to which the appeal relates is more than one lakh rupees, one thousand and five hundred rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-sections referred to in sub-section(4).

254. ORDERS OF APPELLATE TRIBUNAL

1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend and order passed by it under sub-section (1) and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the

liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

3) The Appellate Tribunal shall send a copy of any orders passed under this section 256, order passed by the Appellate Tribunal on appeal shall be final.

255. PROCEDURE OF APPELLATE TRIBUNAL

1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the president of the Appellate Tribunal from among the members thereof.

2) Subject to the provisions contained in sub-section.(3) a Bench shall consist of one judicial member and one a accountant member.

3) The president or any other member of the Appellate Tribunal authorised in this behalf by the central Government may, sitting singly, dispose of any case which has been allotted to the bench of which he is a member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed one lakh rupees, and the President may.

For the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

4) If the members of a Bench differ in opinion on any point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

5) Subject to the provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure and the procedure of Benches thereof and all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

6) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the income

tax authorities referred to in sections 131, and any proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and chapter xxxv of the code of criminal Procedure, 1898 (5 of 1898.)

256. STATEMENT OF CASE TO THE HIGH COURT

1) The assessee or the Commissioner may, within sixty days of the date upon which he is served with notice of an order under section 254, by application in the prescribed form, accompanied where the application is made by the assessee by a fee of two hundred rupees require the Appellate Tribunal to refer to the High Court. Any question of law arising out of such order and subject to the other provisions contained in this section the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case of the case and refer it to the High Court Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period herein before specified, allow it to be presented within a further period not exceeding thirty days.

2) If, on an application made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that on question of law arises, the assessee or the commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court may if it is not satisfied with the correctness of the decision of the Appellate Tribunal require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

3) Where in the exercise of its power under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of such refusal, withdraw his application, and, if he does so, the fee paid shall be refunded.

257. STATEMENT OF CASES TO SUPREME COURT IN CERTAIN CASES

If, on an application made under section 256 the Appellate Tribunal is of the opinion that, on account of a conflict in the

decisions of a conflict in the decisions of High-Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.

258. POWER OF HIGH COURT OR SUPREME COURT TO REQUIRE STATEMENT TO BE AMENDED.

If the High Court or the Supreme Court is not satisfied that the statements in a case referred to are sufficient to enable it to determine the question raised thereby, the court may refer the case back to the Appellate Tribunal for the purpose of making such additions there to or alterations therein as it may direct on that behalf.

259. CASE BEFORE HIGH COURT TO BE HEARD BY NOT LESS THAN TWO JUDGES.

1) When any case has been referred to the High Court under section 256, it shall be heard by a Bench of not less than two judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

2) . Where there is no such majority, the judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other judges of the High court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

260.DECISION OF HIGH COURT OR SUPREME COURT ON THE CASE STATED

1) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the seal of the court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be at the discretion of the court.

D - Appeals to the Supreme Court .

An appeal shall lie to the Supreme Court from any judgment of the High court delivered on an reference made under section 256 in any case which the High Court certifies to be a fit one for appeal to the supreme Court.

262. HEARING BEFORE SUPREME COURT

1) The provisions of the code of Civil Procedure, 1908(5 of 1908), relating to appeals to the supreme Court shall, so far as may be, apply in the case of appeals under section 261 as they apply in the case of appeals from decrees of a High Court.

Provided to affect the provisions of sub-section(1) of section 260 or section 265.

2) The costs of the appeal shall be at the discretion of the Supreme Court.

3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of Supreme court in the manner provided in section 260 in the case of judgement of the High Court.

E - Revision by the Commissioner.

263. REVISION OF ORDERS PREJUDICIAL TO REVENUE

1) The commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the (Assessing) Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation : - For the removal of doubts, it is hereby declared that, for the purpose of this sub-section,--

(a) An order passed on or before or after the 1st day of June, 1986 by the Assessing Officer shall include--

(i) An order of assessment made by the Assistant commissioner or the Income-tax Officer on the basis of directions issued by the Deputy commissioner under section 144 A;

(ii) An order made by the Deputy commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders

or directions issued by the Board or by the Chief commissioner or Director General or Commissioner Authorised by the Board in this behalf under section 120;

(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the commissioner;

(c) Where any order referred to in this sub-section and passed by the Assessing Officer had been the subject -matter of any appeal, filed on or before or after the 1st day of June, 1988 the powers of the commissioner under this sub-section shall extend and shall be deemed always to have extended to such matter as had not been considered and decided in such appeal.

2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

3) An order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation :- In computing the period of limitation for the purposes of sub-section(2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

264. REVISION OF OTHER ORDERS

1) In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, pass such order thereon not being an order prejudicial to the assessee, as he thinks fit.

2) The commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

3) In the case of an application for revision under this sec-

tion by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it.

whichever is earlier:

provided that the commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

4) The commissioner shall not revise any order under this section in the following cases-

a) Where an appeal against the order lies to the Deputy Commissioner (Appeals) or to the commissioner (Appeals) or to the Appellate Tribunal but has not been made and time within which such appeal may be made has not expired or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal ; or

b) where the order is pending on an appeal before the Deputy Commissioner (Appeals); or

c) where the order has been made the subject of an appeal to the commissioner (Appeal) or to the Appellate Tribunal.

5) Every application by an assessee for revision under this section shall be accompanied by a fee of twenty-five rupees.

Explanation :1. An order by the commissioner declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee

Explanation :2. For the purposes of this section, the Deputy Commissioner Appeals shall be deemed to be an authority to the commissioner. The similar provisions are also included under the wealth Tax Act 1957, Gift Tax Act 1958 etc., and being common are not repeated here.

2.4 SIGNIFICANCE OF APPEAL BEFORE SUPREME COURT OF INDIA.

The dispute arising in the course of determination of tax liability are numerous. The direct tax laws are said to be ambiguous for interpretation. They are very frequently amended. The language is not simple and due to all these reasons, there are constantly number of challenging issues between the assessee and the tax collector. There are different appellate forum and these forums minimise the disputes. But the highest forum to settle the dispute is the Supreme court of India. This is a platform where legal disputes are settled and a finality is given to the differences between the assessee and the department. The Supreme Court

has there fore occuopied a significant status and its decisions settle the tax law.

CONCLUSION :

We have gone through the discussion of historical background growth and development of various tax laws. We have also examined circumstances necessiated the Tax authority to establish central Board and also Apollete forum including further provisions for appeals to the Supreme Court regarding settlement of disputes.