# CHAPTER-II

## SIGNIFICANCE OF ASSESSMENT PROCEDURE

2.1: Important Definitions

2.2: Assessment Procedure - Meaning and Significance

# SIGNIFICANCE OF ASSESSMENT PROCEDURE

## 2.1 Important Definitions

### 2.1.1 Assessment [Sec. 2(8)]:

Under Section 2(8), the term assessment has been defined as follows:

"assessment includes reassessment"

The term assessment has not been clearly defined in the Act but in general context the word "assessment" means computation of tax and procedure for imposing tax liability.

Under the Act, there are seven kinds of assessments:

- i) self assessment,
- ii) provisional assessment,
- iii) regular assessment,
- iv) best judgement assessment,
- v) reassessment,
- vi) jeopardy assessment under Sections 172 and 174, and
- vii) precautionary assessment.

Assessment is the process of determining the income or the loss of, or the refund due to an assessee and also determining his tax liability. Thus, there are two stages of an "assessment":

- (i) Computation of total income, and
- (ii) Determination of tax payable or refundable.

The definition of the term 'Assessment' as given by Section 2(8) is not an exhaustive one. The term 'assessment' does not refer only to the original assessment but also includes the assessment in cases which are re-opened under the Act.

2.1.2 Assessee [Sec. 2(7)]:

Section 2(7) defines the term 'Assessee'.

"Assessee means a person by whom any tax or any other sum of money is payable under this Act, and includes -

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;

(b) every person who is deemed to be an assessee under any provision of this Act;

(c) every person who is deemed to be an assessee in default under any provision of this Act.

This definition of an 'assessee' covers two categories:

(i) Persons by whom any tax, penalty or interest is payable under the Act, whether the proceeding has been actually taken or not.

(ii) Persons against whom any of the proceedings specified in the Clause (a) has been taken, whether or not he is liable to pay any tax, penalty or interest.

2.1.3 Person [Sec. 2(31)]:

Under Section 2(31), 'Person' includes:

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

There are seven categories of persons chargeable to tax under the Act. The aforesaid definition is inclusive, and not exclusive. Therefore, any person, not falling in the above mentioned categories may still fall in the four corners of the term 'person' and accordingly may be liable to tax.

2.1.4 Income [Sec. 2(24)]:

Section 2(24) -

'income' includes -

(i) profits and gains;

(ii) dividend;

(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by a trust or institution for national importance referred to in Clause (d) of sub-section (1) of Section 80-f;

(iii) the value of any perquisite or profit in lieu of salary taxable under Clauses (2) and (3) of Section 17;

(iv) 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 who has substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;

(iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in Caluse (iii) or Clause (iv) of sub-section (1) of Section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary;

(v) any sum chargeable to income-tax under Clauses (ii) and (iii) of Section 28 or Section 41 or Section 59;

(va) the value of any benefit or perquisite taxable under Clause (iv) of Section 28;

(vi) any capital gains chargeable under Section 45;

(vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with Section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the first schedule;

(viii) (omitted);

(ix) any winning from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever;

(x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948) or any other fund for the welfare of such employees.

The definition of 'income' as given in the Act is inclusive and not exclusive. The list of income is not complete. The income may include such other receipts as are included in it according to its natural meaning. The following are some important principles which explain the concept of 'income':

1. Income may be received in cash or in kind.
2. Income arises either on receipt basis or on accrual basis.
3. The Income-tax law does not make any distinction between income from a legal source or illegal source.
4. Reimbursement of expenses not treated as income.
5. There is no distinction between temporary and permanent income.
6. Income, whether received in lump sum or in instalments, is liable to tax.
7. Receipt of gifts is not taxable income,
8. Income includes loss.
9. Same income cannot be taxed twice.
10. Income should be real and not fictional.

### 2.1.5 Assessment Year [Sec. 2(9)]:

Section 2(9) -

'assessment year' means the period of twelve months commencing on the 1st day of April every year.

The period of assessment year is fixed and it remains so irrespective of the accounting year adopted by the assessee. Income of previous year of an assessee is taxed during the following assessment year at the rates prescribed for such assessment year by the relevant Finance Act.

2.1.6 Previous Year (Sec. 3)

'Previous year' defined [under Section 3 of the Act as amended in 1987] is as follows:

"Save as otherwise provided in this section, 'previous year' for the purpose of this Act, means the financial year immediately preceding the assessment year".

The Direct Tax Laws (Amendment) Act, 1987 has given a new definition of previous year which will come into force from 1st April 1989. All assessees will be required to follow the same previous year (i.e., financial year). This uniform previous year has to be followed for all sources of income. In the case of a newly established business or profession, the first previous year will be the period which commences with the date of setting up of the business or profession and which ends on March 31 next following.

2.2 Assessment Procedure - Meaning and Significance

The word assessment is used in the Act to mean the computation of income, determination of the amount of tax payable and sometimes the procedure laid down in the Act for imposing liability upon the taxpayer. The meaning to be assigned to the word 'assessment' has to be understood in each section with reference to the context in which it has been used. *The word 'assessment' is used in a number of provisions in a comprehensive sense and it can comprehend the whole procedure for ascertaining and imposing liability upon the taxpayer and the machinery for enforcement thereof.*[1]

The assessment proceeding commences when a return of income is filed by the assessee voluntarily under Section 139(1) or when the notice is issued under Section 142(1) and it ends when the final assessment order is passed by the authority. Income-tax Act, 1961 provides for a very comprehensive assessment procedure under Section 139 to Section 159. Every one has to follow the procedure laid down by the Act.

If we take the term 'assessment procedure' in a broader sense, it will include pre-assessment procedures like deduction of tax at source, payment of advance tax etc. assessment procedure such as submission of return, paymment of tax on self assessment, provisional assessment for refund, and post-assessment procedures such as collection of taxes, refund of excess taxes paid, settlement of appeals in disputed cases etc.

Assessment is the process of determining the income or the loss, or the refund due to the assessee and also determining the tax liability of an assessee. The aim of the Income-tax Act is to tax the income. Fixing the tax liability of a person is an

1 Abraham, C.A. v. I.T.O. (1961) 41, IRT 425 (SC).

important step in the total process of tax collection. All the sections of the Income-tax Act are framed with an object to fix the tax liability properly and to determine the said tax liability every one (assessee and the tax authority) has to follow the procedure laid down by the Income-tax Act for assessment. If the assessee fails to comply with the provisions of the procedure he is liable for penalty. On the other hand if the tax authority fails to follow the provisions of the Act regarding the assessment the action of the officer will be illegal. Therefore, we can say that the procedure for assessment is the heart of the Act where from the tax liability is fixed.