

CHAPTER-I

INTRODUCTION

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INTRODUCTION :

Income tax is an important & significant source of revenue of the Government. In the present age its importance has increased much on account of the policy of the Government to bring about ~~social~~ economic equality. It is an important tool to achieve balanced socio-economic growth by providing incentives & concessions in income-tax for various developmental purposes.

Taxation, is an exercise for the collective solution of individual problems. The individual has numerous problems which the privileged one has the means to solve them. The state takes upon itself the duty of solving such problems & needs finance for this purpose. Thus taxes levied by it represent an attempt at a collective solution of individual problems.

The Government can mobilise resources by levying taxes. These taxes can be direct or indirect. The taxation structure can play an effective role for resources mobilisation. While designing the taxation structure it has to be seen that incentives to personal savings & investment flow are not impaired. It must facilitate & encourage the voluntary payment of taxes.

1.1 BRIEF LEGISLATIVE HISTORY OF INCOME-TAX ACT, 1961 :

Income-tax, in its present form; is one of the contributions of Britishers on the pattern of tax by William Pitt in England in 1798 to meet the financial difficulties of war with France. Income-tax was proposed in India during revolution of 1857. The tax was sought to be temporary for a period of 5 years & expired on 31.7.1865. There after, several amendments were made in it in 1867, 1871, 1873 & 1878. The Act of 1886 which was enforced for the next 32 years witnessed the strains of first world war. In 1918, the Act was replaced by another Income-tax Act which had a short span of life of only 4 years. In 1922, a Bill was presented to take the place of the 1918 Act which incorporated the recommendations of the provincial Income-Tax committees & the All Indian Income-Tax Committee. This Act witnessed the important events in the history of the Country both before the Independence & after, during which it was overburdened with amendments, additions & deletions. On the recommendations of Mahabir Tyagi Committee, Income Tax Bill, 1961 was presented & passed in September, 1961.

The Income-tax Act, 1961 has been brought in to force with effect from 1st April, 1962. It applies to the whole of India (including Jammu & Kashmir). Since then several amendments of far reaching nature have been made in the Income-tax act by the Finance Acts of every year. Besides this, amendments have also been made by various Amending Acts. As a matter of

facts, the Income-tax Act, 1961, which came into force on 1st April, 1962, has been amended & re-amended more often & more drastically during the twenty-one years of its existence than the 1922 Act was amended during the forty years of its existence.

The Direct Tax Laws Committee headed by Shri C.C.Choksi submitted its final reports in October, 1978. Its main recommendations are to simplify & rationalise the laws relating to direct taxes in the number of ways. It has also recommended to simplify laws in regard to charitable trust, depreciation, amalgamation of industrial units under sec. 72-A of the Income-Tax Act, taxation of casual incomes, additional income tax on undistributed profits, assessment procedures, registration of firms, advance tax, settlement of cases, appeals & revisions & acquisition of immovable properties. Some of the recommendations have been implemented by the Government of India. In the books, the sections referred to pertain to Income-tax Act, 1961 as amended up-to-date.

PRESENT ACT :

On the recommendation of Law Commission & Direct Taxes Enquiry Committee & in consultation with Law Ministry a new bill was framed.

Income tax Act, 1961 is a comprehensive Act & consists of

298 sections, sub-sections running into thousands, schedules, rules, sub-rules etc. & is supported by other Acts & rules. This Act has been amended by several amending Acts since-1961. The Annual Finance Bills presented to parliament alongwith budget make far reaching amendments in this Act every year.

The amending Acts & Annual Finance Acts have completely changed the form of the Income-tax Act, 1961. The amendments are being made to simplify this Act which is one of the most complicated laws in operation anywhere in the world.

SCHEME OF TAXATION

Income tax is levied on total income of a person. It is not a tax on gross income or proceeds. Income has to be calculated as per provisions of this Act & on such computed total income-tax rates are applied. The income tax act is a Central Act & is administered by Central Government through the apex body of administration called Central Board of Direct Taxes.

The effort of the Government is to levy tax on higher brackets. It gives several incentives to savings & investment flow on the one hand & tries to curb the unnecessary & wasteful expenditure on the other.

DEFINATION

The word 'Income' in the context of Income-tax Act, 1961, is an expression of art, but even the Act does not make any attempt to define it exhaustively. There is, of course, a definition given in clause (24) of section 2 of the Act, but it is by no means a comprehensive definition. It merely enumerates certain items some of which can not ordinarily be considered as income but are statutorily treated as such

" INCOME " (Sec.2(24)) -

The definition of the term "income" in section 2(24) is inclusive & not exclusive. Therefore, the term "income" not only includes those things which are included in section 2(24), but also includes such thing which the term signifies according to its general & natural meaning. As per definition in section 2(24), the term "income" includes -

- a) Profit & gains,
- b) dividend,
- c) 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 an institution/fund referred to in section 10(21)/(23)/(23C)(iv)/(v);
- d) the value of any perquisite or profit in lieu of salary ;

- e) any special allowance or benefit specifically granted to the assessee to meet his expenses wholly, necessarily and exclusively for the performance of his duties ;
- f) any allowance granted to the assessee either to meet his personal expenses at the place where he performs his duties or compensate him for the increased cost of living;
- g) the value of any benefit or perquisite obtained from a company by a director or a person who has substantial interest in the company or by relative of a director or such person ;
- h) the value of any benefit or perquisite (whether convertible in to money or not) obtained by any representative assessee (sec. 160(1)(iii), (iv)) or beneficiary, or any amount paid by the representative assessee for the benefit of the beneficiary (which the beneficiary would have ordinarily been required to pay.),
- i) any sum chargeable u/s.28(ii),(iii) 41 or 59;
- j) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of profession;
- k) any capital gains
- l) insurance profit computed u/s.44 ;
- m) any annuity u/s. 280 ~~D~~ ;
- n) winnings from lotteries, crossword puzzles, races including horse races, card games & other games of any sort;
- o) any sum received by the assessee from his employees as contribution to any fund for the welfare of employees.

1.2 NATURE OF TAXES OF THE UNION GOVERNMENT :

Income-tax occupies a dominant place in the Direct Taxes & it is an important source of revenue for the Government. The administration & collection of Income-tax is vested in the Central Government. But the net proceeds of the tax (gross amount of tax collected less collection charges) are apportioned between the centre & the States. However, the following are excluded from the divisible pool;

- i) The corporation Tax (income tax on Companies)
- ii) The proceeds of tax attributable to union territories.
- iii) Tax payable in respect of the union emoluments-paid out of the consolidated fund of India.
- iv) Surcharge on income-tax for purpose of the union, if any.

The amount excluded from the divisible pool goes to the Central Government. The principles regarding the distribution of the remaining amount are determined by the Finance Commission which is appointed every five years.

LEGISLATION TO INCOMES-TAX IN INDIA :

The law of income-tax is contained in the income-tax Act, 1961, as amended up-to-date, the Income-tax Rules, 1962 as amended

up-to-date & the Finance Act. Besides these, there are Notifications, orders & Executive Instructions of the department governing the procedural aspects of the law. The Income-tax Act, is the main enactment which deals the method of computation of income under prescribed heads, the procedure for making an assessment, collection & recovery of tax, refund, penalties & prececutions, appeals, rectification proceedings & powers of the income-tax authorities.

The Finance Act is passed by the parliament every year. It fixes the rates of tax for the relevant assessment year, rates for deduction of tax at source & advance payment of tax. Now it is also being used to effect substantial amendments to the Income-tax Act. Where, in any assessment year the Finance Act has not passed on 1st April, the tax shall be charged at the rates in force in the preceding assessment year or at the proposed rates in the Finance Bill then before parliament, whichever is favourable to the assessee.

The process of simplification [§] however resulted in an Act Consisting of 298 sections instead of 67 sections of the old Act, with four schedules consisting of about 137 sections. The Income-tax Rule containing 119 rules has also to be issued by the Board.

EXTENT OF THE ACT :

Owing to the various changes that were happening in the territories of India consequent on the merger of the Native States one after another. It was decided in 1950 to add a definition of "taxable territories" & to amend the definition expression from time to time. A glance of the definition of "taxable territories" in sub-section (14-A) of section 2 of the old Act is sufficient to show the gradual extension of the Income tax Act year by year, to more & more areas. As the consolidation of the territories of India was almost completed when the Act of 1961 was enacted, the definition of taxable territories was omitted. The Act was extended to the Union Territories of Dadra & Nagar Haveli, Goa, Daman & Diu & Pondicherry by the Taxation Laws (Extension to Union Territories) Regulation, 1963 with effect from the assessment year 1963-64.

The Act applies, "to the whole of India" that is "India" as defined in the constitution.

TERRITORIES OF INDIA :

"India" is defined in the constitution as follows :-

- 1) India, that is Bharat, shall be a union of States.
- 2) The states & the territories there of shall be as specified in the First Schedule.
- 3) The territory of India shall comprise -
 - a) Territories of the States.

- b) the union territories specified in the first schedule &
- c) Such other territories as may be acquired.

1.3 OBJECTIVE OF THE STUDY :

The entire Income-tax legislation as codified under the Income-Act, 1961, is spread over in 298 sections. These sections are suitably arranged under chapters-each dealing with individual subject following thereunder.

The procedure for assessment, divisions of Income under different head, deductions under each head, exemption of income, procedure for assessment etc. are contained under these chapters. However, specific issues relating to the treatment of losses under different situations, have been dealt with under chapter relating to, "Set off & carry forward & set off of losses", under the Income-tax Act, 1961. More particularly, Sec.70 to 80 deals with the treatment of losses.

Therefore, the main objective of the study pertains to the overall examination of the statutory provisions under Sec. 70 to Sec. 80 deals with this relief.

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