

CHAPTER ONE

INTRODUCTION

1.1 INTRODUCTION:

Taxation in Indian context is as old as the civilization itself. Down through millenia, kings, rulers and feudal lords used to collect assorted taxes from their subjects and spend the money so collected occasionally for the benefit of the subjects but mostly for aggrandisement and filling up personal coffers. The subjects, on their part, mostly bore the taxing whims of their rulers in silence; but in unbearable circumstances, there were 'ryot' (taxpayers') outbreaks and revolts. As such, "Direct taxation is not a novelty in India introduced by the British, as too commonly supposed, but a most ancient and wellknown institution".¹

The fiscal exigencies consequent upon the events of 1857 made the British Government to impose direct taxation in India in the year 1860, but the system adopted by it was modelled on the income-tax then in force in England. This tax was described by the first Indian Income-tax Act of 1860 as "Duties of 3 and 1 per cent", which were a revenue measure. According to the historical account given by Pal,

The history of income-tax in India may be divided into three clearcut periods, (1) 1860-1885, (2) 1886-

1914, and (3) from the World War I to date. The first period was a period of experiment. The tax was twice introduced - in 1860 and 1869, and twice abandoned - in 1865 and 1873. In the second period, the income-tax policy of the Government overgrew its trial-and-error stage and came to acquire definiteness. The third period is the period of vital reforms in income-tax law. The most important features that mark this period are the introduction of graduation in the tax ... In the earlier part of the period, the enactments relating to the tax were so numerous that the necessity arose of repealing all the previous enactments and having one single statute in their place. Thus came the Income-tax Act of 1922.²

1.2 BRIEF HISTORY OF THE INCOME-TAX ACT, 1961:

The Act of 1922, for the first time, introduced the principle of fixing the rates of tax through the Annual Finance Acts instead of by the schedule attached to the Income-tax Act (a practice followed hitherto). The Act also went through nearly forty amending Acts during the period from 1922 to 1957; particularly the amendments of 1948 to 1957 were based on the recommendations of the Income-tax Investigation Commission appointed in 1947 and another in 1953. Finally, the Act was completely recast in 1961, partly to give effect to the recommendations of the Committee which examined administrative processes and partly to carry out the recommendations of the Law Commission.

India, being a Sovereign Democratic Republic which has adopted a written Constitution for the governance of her affairs of State; the power to levy, administer and collect taxes flows out of Constitution. The Seventh Schedule to the Constitution provides for a List which is further sub-divided into three separate Lists, namely, the Union List, the State List and the Concurrent List; and Article 270 of the Constitution provides for taxes, including taxes on income other than agricultural income, that are levied and collected by the Union and distributed between the Union and the States. While recasting the Income-tax Act, the framers certainly were guided by the founding principles of the Constitution.

Nevertheless, the Income-tax Act, 1961, is a more or less modified and simplified version of the Indian Income-tax Act of 1922. The Income-tax Act, 1961, is a comprehensive Act. It has 23 Chapters, more than 298 Sections, numerous sub-sections and twelve Schedules. For its governance, the Department has framed about 200 rules, which, in turn, have hundreds of sub-rules. The Act extends to the whole of India. Since its inception in 1961, "it has undergone more than 3300 amendments in less than thirty years".³

1.3 APPEAL AND REVISION PROVISIONS:

Chapter XX of the Income-tax Act, 1961, is devoted

to Appeals and Revisions and has been sub-divided into six parts.

Part A is titled "Appeals to Deputy Commissioner (Appeals) and Commissioner (Appeals)" and consists of six sections, viz.

S.246 Appealable orders

S.247 Appeal by partner

S.248 Appeal by person denying liability to deduct tax

S.249 Form of appeal and limitation

S.250 Procedure in appeal

S.251 Powers of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals).

Part B is titled "Appeals to the Appellate Tribunal" and consists of four sections, viz.

S.252 Appellate Tribunal

S.253 Appeals to the Appellate Tribunal

S.254 Orders of Appellate Tribunal

S.255 Procedure of Appellate Tribunal

Part C is titled "Reference to High Court" and comprises five sections, viz.

S.256 Statement of case to the High Court

S.257 Statement of case to Supreme Court in certain cases

S.258 Power of High Court or Supreme Court to

requirement statement to be amended

S.259 Case before High Court to be heard by
not less than two judges

S.260 Decision of High Court or Supreme Court on
the case stated.

Part D is titled "Appeals to the Supreme Court" and
includes two sections, viz.

S.261 Appeal to Supreme Court

S.262 Hearing before Supreme Court.

Part E is titled "Revision by the Commissioner"
and also includes two sections, viz.

S.263 Revision of orders prejudicial to revenue

S.264 Revision of other orders.

The text of each of these Sections together with
their legislative history of amendments, additions and deletions
are given in Chapter-II and a critical evaluation of the
statutory provisions pertaining thereto is contained in
Chapter-III of the Dissertation.

1.4 STATEMENT OF THE PROBLEM:

"Appeal", according to Webster's Dictionary, is
"the removal of a cause of suit from an inferior to a superior
judge or court for re-examination or review". Wharton's
Law Lexicon expresses it as "the removal of a cause from an
inferior to a superior court for the purpose of testing the

soundness of the decision of the inferior court"; while Sweet's Law Dictionary defines it as "a proceeding taken to rectify an erroneous decision of a court by submitting the question to a higher court, or court of appeal". In essence, these and such other definitions mean a complaint to a higher forum that the decision of the subordinate officer or tribunal is erroneous and liable to be set aside; and embraces all proceedings whereby a superior court is called upon to review, revise, affirm, reverse or modify the decision of an inferior court. It also essentially revises and corrects the proceedings in a cause already instituted and does not create that cause, which, in other words, means that the subject matter has been already instituted and acted upon by some other court, whose judgment or proceedings are to be revised.

Another singularly important aspect is that the right of appeal inheres in no one and, therefore, an appeal for its maintainability must have the clear authority of law. Since the right is not an inherent right, it cannot come under the category of fundamental rights. The right to appeal can exist only if it is given by a statute and it cannot be assumed that there is a right of appeal in every matter which comes under the consideration of the court; such right must be given by a statute or some authority equivalent of the statute. It follows as a corollary that the right of appeal is limited to the extent permitted by the

7

statute granting it and hence, it is open to the legislature, while granting the right, to impose limitations on it. Further, the right of appeal is not merely a matter of procedure but it is a matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court. **The right of appeal is a most valuable right and deprivation of that right is not to be lightly assumed.**

Accordingly, the statement of the problem could be accurately expressed as: **Procedure for Appeals and Revisions under the Income-tax Law.**

1.5 OBJECTIVES OF THE STUDY:

The Income-tax Act, 1961, is a legislation that basically provides the procedure for assessment and collection of tax on income. Specific Sections of the legislation provide for appeals and revisions for redressing the grievances of the assesseees and simultaneously also empowers the Income-tax Department to seek such redressal through various forums. The present research focusses on analysing these provisions and ascertaining their adequacy or otherwise. Against this background, the following have been set out as the objectives of the present study:

- (1) To critically examine the existing provisions for appeals and revisions in the Income-tax Act, 1961;
- (2) To evaluate the procedure laid down under the Income-tax Act, 1961, for appeals and revisions;
- (3) To derive definitive conclusions and propose meaningful suggestions in order to improve/simplify the present appeal and revision procedures.

1.6 METHODOLOGY ADOPTED FOR THE STUDY:

The study is based purely on the **secondary data** that is, published sources, and lays emphasis on the analysis of the statutory provisions governing the appellate provisions. In order to help in this endeavour, other published sources like authoritative books and journals have also been referred to wherever necessary.

1.7 SCOPE OF THE STUDY:

The present study attempts to critically examine the provisions for and evaluate the procedure laid down in Chapter-XX (Sections 246 to 264) in respect of appeals and revisions under the Income-tax Act, 1961. The emphasis, therefore, is on the practical aspects, though theoretical discussions pertaining thereto have also been resorted to for the purpose of the present research work.

1.8 SIGNIFICANCE OF THE STUDY:

Tax litigations have been on increase in recent years. In order to have congenial relationship between the State (tax-gatherer) and the assessee (taxpayer), the inherent scope for litigations in the tax statutes ought to be minimized. In fact, the effectiveness of the tax legislation significantly depends on the minimization of the litigations. The thrust of the present study is on examining and evaluating the appellate provisions and procedure and to offer meaningful suggestions with a view to improve/simplify the process of tax collection.

1.9 LIMITATIONS OF THE STUDY:

Chapter-XX (from Section 246 to 269) has been exclusively devoted to appeals and revisions. Besides, over the years, innumerable amendments to these Sections have been brought into force in addition to the various case-law laid down by the High Courts and the Supreme Court of India. It is beyond the scope of this Dissertation to take an exhaustive review of each and every amendment and the case-law.

1.10 CHAPTER SCHEME:

The Dissertation is divided into Four Chapters.

Chapter One deals with the introduction of the income-tax and the legislative history of the appellate provisions as also the framework aspects of the present research work such as statement of problem, objectives, methodology, scope, significance and limitations. **Chapter Two** presents the statutory provisions relating to the appeals and revisions. **Chapter Three** attempts a critical evaluation of the secondary data presented in Chapter Two and finally, **Chapter Four** presents the conclusions arrived at at the end of the study and offers certain suggestions aimed at improving and simplifying the appellate procedure. A comprehensive **Bibliography** concludes the Dissertation.

REFERENCES

1. Sundaram, V.S. : "Law of Income Tax in India", 11th Edition, Law Publishers, Allahabad, 1978, p.2.
2. As quoted by Sampath Iyengar, A.C. in: "The Three New Taxes", Fourth Edition, Central Law Agency, Allahabad, 1976, p.8.
3. Palkhivala, N.A. and B.A.Palkhivala : "The Law and Practice of Income Tax", Eighth Edition, Vol.1, N.M.Tripathi Private Limited, Bombay, 1990, p.9.