CHAPTER - IV

CONCLUSIONS AND SUGGESTIONS

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4.1 CONCLUSIONS:

As already stated in the concluding paragraphs of the preceding Chapter, the procedure of appeals and revisions under the Income-tax Act, 1961, is highly complex. At the same time, since the inception of the 1922 Act, there have been numerous attempts at simplifying this procedure, either through legislative amendments to the Act or through the appointment of committees for enquiring into the administration of the income-tax law. The Direct Tax Laws Committee (Chokshi Committee) in its Final Report (September 1978) has already suggested certain radical measures for reforming the appellate procedure.

The researcher, on his own, has come to the following specific conclusions in relation to the evaluation carried out in the preceding Chapter. These conclusions are being categorically summarized as under:

(1) As every successive Government attempts to raise additional tax revenue through direct taxation, the interpretative confusion and/or disagreements arising as a result of amendments to the income-tax law through the Annual Finance Acts gives an added impetus to the

generation of tax litigation.

(2) One of the direct offshoots of the rising tax litigation is the ever-increasing volume of tax arrears, i.e. the tax revenue remaining uncollected due to assessee or department having opted for successive appeals or references.

(3) It must also be realized that by the time a tax litigation has run its full course through all appellate authorities and the ultimate verdict delivered by the Supreme Court (if the litigation indeed has reached such highest forum), the real value of the tax-arrear amount has been considerably eroded due to inflation.

(4) The appellate authorities upto the primary hierarchical level of the Commissioner (Appeals) function within the Income-tax Department itself, under the Ministry of Finance of the Union Government; while the Appellate Tribunal, at the secondary hierarchical level, functions within the administrative jurisdiction of the Ministry of Law of the Union Government. The tertiary hierarchical level is of the High Courts and the Supreme Court, which are though technically within the administrative jurisdiction of the Ministry of Law, the judiciary itself is treated as an independent branch of the Government, on par with the legislative and executive

branches. Such overlapping of the jurisdictions of different Government Ministries as well as the role-conflict within the hierarchical set-up itself is bound to give rise to administrative snags and bottlenecks.

(5) There is a large scope for limiting the upward spiralling of the tax litigations if the powers of the first appellate authority, i.e. the Appellate Assistant Commissioner, are clearly defined.

Secondly, the areas of 'questions of fact' (the settlement of which has been expressly charged to the intra-Departmental set-up and the Appellate Tribunal) and 'questions of law' (over which the High Courts and the Supreme Court enjoy advisory jurisdiction) are hazy and mystifying.

4.2 SUGGESTIONS:

In order to set right some of the snafus in the procedural set-up, the researcher ventures to put forward the following suggestions:

(1) The first appellate authority's (Appellate Assistant Commissioner's) power to set aside an assessment or remand it to the assessing authority should include the the following situations: -

(a) where the appellate authority comes to the conclusion that an ex parte assessment is bad in law;

(b) where the appellate authority reasonably believes that the admission of originally unspecified ground of appeal is justified in law;

(c) where the appellate authority allows the admission of any fresh evidence after due deliberation; and

(d) where the appellate authority reasonably believes that any of the grounds of appeal has not been given due consideration by the assessing officer.

(2) The entire procedure for setting up of the Appellate Tribunal needs to be re-evaluated, particularly with reference to the constitution and composition of the Tribunal.

(3) The Chokshi Committee has rightly suggested the establishment of a Central Tax Court with an all-India jurisdiction to deal exclusively with the litigations under the direct tax laws and also that such a Court should be constituted under a separate Statute.

The researcher fully concurrs with the suggestion and adds that all the appellate authorities under the direct tax laws should be under the umbrella of one Union Government Ministry, unlike different ministries as in the present set-up.

Furthermore, the jurisdiction of the Central Law Court should be appellate and not advisory. With the establishment of such a Central Law Court, the advisory jurisdiction of the High Courts would be eliminated but the advisory jurisdiction of the Supreme Court of India should continue.

(4) The Central Law Court should be made the ultimate authority to decide as to which are the questions of fact and which are the questions of law. Hence, appeal should not lie to the Supreme Court to decide as to whether the question is of fact or of the law.

(5) It must, however, be pointed out that in order to introduce such innnovations, the basic tax law itself should be simplified and streamlined and the administrative machinery strengthened.

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