CHAPTER - III

ANALYSIS AND EVALUATION

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3.1 INTRODUCTION:

In the present Chapter, an attempt is made to discuss in some detail the statutory provisions of Sections 2(24), 4, 5, 14, 60, 61, 62, 63, 64 and 65 of the Income-tax Act 1961, being the Sections taken up for study. As already stated in Chapter-I, the whole exercise of analysis and interpretation concentrates on judging the spirit of these Sections and evaluate their significance and correlationship in the overall framework of the Income-tax Act, 1961.

3.2 SECTION 2(24):

3.2.1 Legislative History:

The definition of 'income' was first introduced in the Indian Income-tax Act of 1922 in the year 1939 and was enlarged in 1947 to cover 'capital gains' and again in 1955, to include the benefits received by the directors of companies and substantial shareholders thereof as well as several items deemed to be profits under various Sections. Clause (1) was inserted, for the first time, in 1961 to end discussion as to the discussion, between 'income' on the one hand and 'profits and gains' on the other.[1] Subsequent

amendments, deletions and alterations are recorded in the 'References' Part of Chapter-II.

3.2.2 Analysis and Evaluation:

The definition of the term 'income' starts with the word 'includes' and as is seen from the text of the Section, the list is not exhaustive. A careful reading of the Section reveals that the word 'income' has an extended meaning which is not restricted to the connotation of the word. The definition, therefore, has to be an inclusive one and the natural meaning of 'income' could not be curtailed with reference to the clauses enumerated in the inclusive portion. The definition, however, being not exhaustive, is incapable of supplying proper criteria for judging whether a particular item of receipt falls within its ambit. Judicial decisions have repeatedly shown that the word 'income' has a very elastic ambit; so much so that anything which comes in from an outside source is treated as 'income', whether revenue or capital. Within the scope of the Act, thus, 'income' has been accorded a special definition thereby expanding the ordinary meaning of the word so as to include specific cases which in the absence of a definition would fall under 'capital'.[2]

In the popular sense, therefore, 'income' would mean the 'resultant' of exertion or activity. In the statutory

sense, however, it might take into its fold such moneys though not popularly or commercially understood as income but deemed to be income under the provisions of the Act.[3]

We now proceed with an examination of the meanings of the different items of Section 2(24):

i. **Profits and gains** : These words are more appropriate to describe the surplus from business. Income, on the other hand, is a general term than 'profits and gains'.[4] The words 'profits' and 'gain' are equivalent and interchangeable expressions.[5] They should be understood in their natural and proper senses - in a sense which no commercial man would misunderstand.[6] The profits or gains of a business or trade are the excess of receipts over the expenditure necessary to earn these profits.[7]

ii. **Dividend** : Section 2(22) of the Act exhaustively defines what may and what may not constitute 'dividend'. As such, for the purpose of Section 2(24), income includes not only dividend in the ordinary accepted sense but also even those distributions or payments that are included in the definition of dividend as given in Section 2(22).

iia. **Voluntary contributions received by a trust or an institution**: Under Section 12 of the Act, voluntary contributions received by any charitable or religious trust and

institution are regarded as 'income' arising from property held under trust if the trust or the institution is set up wholly for charitable or religious purposes and the contribution are not made with a specific direction that they shall form part of the corpus of the trust or the institution. Such voluntary contributions, however, will be exempt if they satisfy the requirements of Sections 11 and 13 of the Act.

iii. **Perquisite or profit** : The definition enumerates that the value of any perquisite or profit in lieu of salary taxable under Sections 17(2) and (3) is included in the definition of income. The Direct Tax Laws (Amendment) Act, 1989, has added special allowance or benefit, other than perquisite, as also personal and compensatory allowance, to be included in the definition of income. These additions have been numbered as **iiia** and **iiib**.

iv. **Benefit or perquisite obtained by director**: This definition consists of two parts. The first part includes the value of any benefit or perquisite. The second part relates to 'any sum' in respect of any obligation paid by the Company. The Finance (No.2) Act, 1980, has inserted item **iva** pertaining to the value of any benefit or perquisite obtained by any representative assessee (beneficiary).

v. **Sum chargeable to clauses (ii) and (iii) of Section 28 or Sections 41 or 59** : Clause (ii) of Section 28 deals with compensation or other payment due or received by any person, by whatever name called, managing the whole or substantially the whole of the affairs of the company or holding an agency in India in connection with the termination of his management or office or agency. Clause (iii) deals with the income derived by a trade, professional or similar association from the specific services performed for its members.

Section 41 mentions the following sums chargeable to tax as income from business or profession of the year in which the realization is made or the sales take place:

(1) An amount or benefit received by the assessee in a subsequent year against loss, expenditure or trading liability incurred in an earlier year;

(2) An amount not exceeding the difference between the actual cost and the written down value of any building, machinery, plant or furniture received on sale, etc.

(3) An amount not exceeding the amount of deductions allowed under Section 35(2), representing the difference between the sale proceeds on the sale of such assets plus the said deductions and the capital expenditure on scientific research.

(3) An amount not exceeding the amount of deductions allowed under Section 35(2), representing the difference between the sale proceeds on the sale of such assets plus the said deductions and the capital expenditure on scientific research.

(4) An amount of received from a debtor whose debt was written off as bad earlier and was wholly or partly allowed in an earlier assessment, to the extent of allowance made earlier.

Section 59 provides that where income is assessable under the head 'other sources', the realization made of the nature as at no.1 above or the amount mentioned of the nature as at no.2 above will be chargeable to tax as income within the meaning of the definition.

It is seen from the above that clause (v) generally relates to the incomes from 'other sources'. The Finance Act, 1990, added four more categories of income to this clause as **(va)**, **(vb)** and **(vc)** and renumbered clause (va) (originally inserted by the Finance Act, 1964), as **(vd)**. The incomes identified by these additional four clauses are all defined in Section 28.

vi. **Capital gains:** The definition of 'income' specifically mentions the capital gains falling under Section 45 and not other Sections. However, since Section 46(2) makes

the amount received by a shareholder on the liquidation of a company chargeable as capital gains, it will have to be included in the total income of the assessee.[8]

vii. **Profits of a mutual insurance company, etc.**: This definition of income includes the profits and gains of any business of insurance carried on by a cooperative society. Section 44 of the Act prescribes that the said profits and gains shall be computed in accordance with the rules contained in the First Schedule to the Act.

viii. **Repayments of annuity and payment of its commuted value**: This definition declares that the annuity due and the commuted value of any annuity paid under the provisions of Section 280-D are income.

ix. **Winnings from lottery, etc.** : The text of the clause itself is amply clear to describe the definition of income. This clause was inserted by the Finance Act, 1972.

x. **Contribution received from employer to provident fund or superannuation fund, etc.** : This clause was inserted by the Finance Act, 1987, and brings within the fold of income all such sums received as contribution towards employee welfare funds.

It is obvious from the foregoing cursory look at the definitions that the codification of the precise meaning of the term 'income' has remained elusive inspite of the best

legislative and judicial efforts. The legislative history of the Section makes it clear that the State, driven by the necessity to generate additional tax revenue, cannot resist the temptation of adding more meanings to the word 'income'. On the other hand, the responsibility of interpreting the Legislature's intentions is reposed in the judiciary. In the process, the inability of the Legislature to come through clearly with what is on its mind is further compounded by the frequently opposing interpretations insisted upon by the Income-tax Department and the taxpayer.

3.3 SECTION 4:

3.3.1 Legislative History:

In the 1922 Act, this Section was numbered as Section 3 and was in a rather cryptic form. The 1961 Act appeared with the proviso attached to this section and sub-Section (2) was added to make it clear that there is a liability also for the deduction of tax at source or in advance. The Direct Tax Laws (Amendment) Act, 1987, incorporated certain amendments in the Section.

3.3.2 Analysis and Evaluation:

Section 4 imposes charges of income-tax. The chargeability of income-tax has to be in accordance with and subject to the provisions of the Act. The income has

to be brought under any one of the heads of income under Section 14 and can be charged to tax only if it is so chargeable under the computing Section corresponding to that head of Section.[9]

An analysis of the Section shows that it lays down the following principles:

1. That income-tax shall be charged for an assessment year;
2. That it shall be charged at the rate or rates prescribed by the Central Act;
3. That it shall be charged for that year, in accordance with, and subject to the provisions of the Act, in respect of the total income of the previous year or previous years, as the case may be, of every person;
4. That where this Act provides the charging of income-tax for a period other than the previous year, income-tax shall be charged accordingly, as per proviso to sub-section (1);
5. That the payment of tax in advance or by deduction at source in respect of income chargeable under sub-section (1) is mandatory where it is so payable or deductible under any provision of this Act, as per sub-section (2).[10]

The above principles, extracted from the text of

the Section show that inspite of the brevity of the language used, the scope of the Section is much much wide. Conversely, it also has inherently wide scope for interpretative disagreements; and time and again, various High Courts in the country, the Privy Council in the pre-Independence period and later on, the Supreme Court of India, have had to set down the case law as to the judicial meanings of the terms used in the Section.

In the context of the 1961 Act, it has been observed by the Supreme Court that,

> *although under the Act, Section 4 is the charging Section, yet income-tax can be charged only where the Central Act, which normally is the Finance Act, enacts that income-tax shall be charged for any assessment year at the rate or rates specified therein.*[11]

Now, Section 2 of a Finance Act would show that the term 'income-tax' as used therein includes surcharge. According to Article 271 of the Constitution of India, the Parliament may, at any time, increase any of the duties or taxes referred to in the Article by a surcharge for the purpose of the Union and the whole proceeds of any such surcharge, notwithstanding anything in Articles 269 and 270, form part of the Consolidated Fund of India. Articles 268, 269 and 270 deal with the levy, collection and distribution of the proceeds of the taxes and duties mentioned therein

between the Union and the States. The legislative power of the Parliament to levy taxes and duties is contained in Articles 245 and 246(1) read with the relevant entries in LIST-1 of the Seventh Schedule. The word 'surcharge' has been used in Article 271 for the purpose of separating it from the basic charge of a tax or duty for the purpose of distributing the proceeds of the same between the Union and the States. The proceeds of the surcharge are exclusively assigned to the Union. Even in the Finance Act itself, it is expressly stated that the surcharge is meant for the purpose of the Union.[12]

The meaning of the word "surcharge" is 'to charge in addition to or subject to an additional or extra charge. If that meaning is applied to Section 2 of the Finance Act (generally, Section 2 of each year's Finance Act enacts, interalia, that for the assessment year commencing on the first day of April of that year, income-tax shall be charged at the rate specified in Part-I of the First Schedule, etc.) it would lead to the result that the income-tax was to be charged in four different ways, or at four different rates, namely (1) the basic charge or rate; (ii) surcharge; (iii) special surcharge; and (iv) additional surcharge calculated in the manner provided in the Schedule. Reading in this way, additional charges form a part of income-tax. The Entry 82 in List-I annexed to the Constitution relates to

taxes on income, other than agricultural income. Income-tax and surcharge would fall under this Entry.[13]

Thus, after establishing the Constitutional validity of the charging Section of the Act, we now look at it from the judicial angle.

The Supreme Court has laid down in clear terms that,

In construing fiscal statutes and in determining the liability of a subject to tax, one must have regard to the strict letter of law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter.[14]

Their Lordships were drawing from the Ruling given by Rowlatt, J. in the year 1921,

In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.[15]

In a subsequent decision, Their Lordships have observed about the reasonableness of the tax as,

> *So long as the tax retains its character as a tax and is not confiscactory, or extortionate, the reasonableness of the tax cannot be questioned. The objects to be taxed, the quantum of tax to be levied, the conditions subject to which it is levied and the social and economic objectives which a tax is designed to subserve are all matters of political character and these matters have been entrusted to the legislature and not to the Courts. In applying the test of reasonableness, it is essential to notice that the power of taxation is generally regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit.*[16]

In the year 1926, Lord Dunedin had identified the following three stages in the imposition of a tax,

> *There are three stages in imposition of a tax. There is the declaration of liability, that is the part of the statute that determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment, that ex hypothesi has already been fixed. But the assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery if the person taxed does not voluntarily pay.*[17]

It is a fundamental rule of the law of taxation that unless otherwise expressly provided, income cannot

be taxed twice.[18] In other words, there can be double taxation if the Legislature has distinctly enacted it. As Section 4 proposes of charging tax in respect of the income of persons and not of charging tax on persons, the Supreme Court, in its various decisions, has held that the same income cannot be repeatedly charged in the hands of more than one person. Thus, an item, not allowed to be deducted when computing a person's income, can be taxed in the hands of the recipient, e.g. Section 40(c) prohibits the deduction of certain items, which may also be taxed in the hands of the payee. Also, there can be no question of double taxation where the payment is the application of one's income and both payer and payee are taxed. So also the double taxation is not involved when the same sum is subject to two different taxes under two different enactments.

All that can be said is that the same income cannot be taxed in the same hands twice and there is no immunity once income leaves one's hands. The provisions relating to firms and associations are special ones. Conversely, there can be no doubt that for the purpose of the Income-tax Act, the same income cannot be received more than once.[19]

The undercurrent running through the foregoing discussions about the legislative and judicial perspectives of Section 4 makes it evident that despite the crypticness and precision in the language used in drafting, every phrase

of the Section is susceptible to opposing interpretations and consequently, litigations. The literature is brimming over with the reported cases over fundamental issues like chargeability, distinctness of liability to tax from its quantification by assessment, Constitutionality of the annual Finance Acts, applicability or otherwise of the Doctrines of res judicata, estoppel and approbate and reprobate. After wading through the reported cases over the basic tenets, one comes across the cases seeking judicial intervention in the matter of interpretation of such practical terms as 'income', 'income or capital', 'profits and gains', 'diversion or application of income', etc.

Interestingly, although Sections 4 and 5 impose a general liability to tax upon all income, the Act does not provide that whatever is received by a person must be regarded as income liable to tax. The Supreme Court's observations regarding the primary onus are self-explanatory,

> *In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provisions. Where, however, a receipt is in the nature of income, the burden of proving that it is not taxable, because it falls within an exemption provided by the Act, lies upon the assessee.*[20]

3.4 SECTION 5:

3.4.5 Legislative History:

Section 5 corresponds to Section 4 (in part) of the 1922 Act. In the 1961 Act, it has appeared with certain modifications and with added explanations. Since 1961, however, the Section has not undergone any changes, modifications or alterations.

3.3.2 Analysis and Evaluation:

This Section defines the scope of the total income referred to in the principal charging Section. In laying down the precise scope of the total income that would be subject to the charge of income-tax, Section 5 proceeds to classify the assessees into three broad categories, namely,

(1) residents and ordinarily residents,

(2) residents but not ordinarily residents, and

(3) non-residents.

The criteria for the determination of the proper category of an assessee are laid down in Section 6. The intention of Section 5 is to lay down as to what types of incomes would constitute the total income in the case of assessees belonging to each of these three categories.

(1) <u>In the case of resident</u>:

In the case of resident, all income of the previous

year from whatever source derived forms part of his total income, which -

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him India during such year; or

(c) accrues or arises to him outside India during such year.

(2) <u>In the case of a person not ordinarily resident:</u>

In the case of a person not ordinarily resident in India, within the meaning of Section 6(6), the total income of any previous years includes all income from whatever source derived, which -

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such years; or

(c) accrues or arises to him outside India during such year from business controlled in or a profession set up in India.

It will be noticed that in the case of a person not ordinarily resident in India, it is only business or professional income accruing or arising outside India, which is included and that also if the business is controlled in or the profession is set up in India. In other words, income of such a person from sources other than business or profession

will not form part of his total income if the same accrues or arises to him outside India during such year and is otherwise not deemed to accrue or arise in India under any other provision of the Act.

(3) In the case of non-resident:

In the case of non-resident, the total income of such person of any previous year, shall include all income from whatever sources derived, which -

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

It will be seen that were a person is a non-resident, income accruing or arising outside India (and not deemed as accruing and arising in India) is not included in his total income, but such is not the case where the person is not ordinarily resident. In this case, such income forms part of his total income provided it is derived from the business controlled in or profession set-up in India. In the case of a resident, even such subtlety does not exist and all income accruing or arising outside India form part of his total income.

In addition to the above interpretation of the Section and its provisos, the Explanations to the Section have also to be interpreted for truly grasping the scope of the

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total income covered under the Section.

Explanation 1:

For the purpose of Section 5, the fact of receipt or accrual of income is an important consideration in the case of non-residents and in respect of some income in the case of not ordinarily resident. Explanation 1 to the Section makes it clear that income accruing or arising outside India shall not be deemed to be received in India by reason only of the fact that it is taken into account in the balance-sheet prepared in India. The word 'only' occurring in the expressions 'by reason only of' expresses that such fact can be taken into consideration but it should be coupled with other facts or evidence to support a finding that income can be deemed to be received in India. The words 'within the meaning of this section' occurring in the Explanation make it clearer that the Explanation is not to be read as related only to sub-section (2).

Explanation 2:

Subject to some exceptions, an accrual of income normally precedes its receipt and it may so happen that the accrual is in one previous year of the assessee and the receipt is in the other. For example, a dividend accrues due from the moment it is declared but it may be actually received by the assessee after some passage of time. If it is taxed on accrual basis in the previous year when it

is declared, question may arise whether it can again be taxed when it is actually received. Obviously, taking the same income in the hands of the same assessee first on accrual and then on receipt basis will be inequitable. Explanation 2 sets at rest any doubts in the matter and it declares that such double-taxation will not be resorted to. The condition necessary in such a case is that income should have been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him. It is not necessary, however, that such inclusion should have yielded tax to the revenue. It is quite likely that by such inclusion, no tax is raised. Even so, such income cannot again form part of the total income on the basis that is received or deemed to be received by him in India. Where, however, an income which accrued or arose earlier was not included in the total income of the previous year, there is nothing to prohibit the inclusion of such income in the total income of the previous year when it is received or can be deemed to have been received. On the contrary, it is implied by the Explanation that such income can be included when it is received or deemed to be received.

The above discussion about the Section, its provisos and Explanations bring out another significant fact that receipt of income is not a condition precedent to taxability. Receipt

of income, whether actual or deemed, is not made by the Act a condition precedent to taxability. The profits of business do not escape tax by reason only of the fact that they are not received in the accounting year in money or the equivalent of money or are not deemed to be so received. They are taxable if they have accrued or arisen or are deemed, under the Act, to have accrued or arisen to the assessee in the accounting year, just as much as if they had been received or were deemed to have been received in that year.

Thus, in order to determine what constitutes a receipt, the following principles may be taken into consideration:

1. there must be a person to receive;
2. there must be a person from whom to receive;
3. there must be something received by the former from the latter;
4. that something may be a sum of money or a negotiable instrument or other document which represents and produces coins and is treated as such by businessmen;
5. A mere entry in account which does not represent such a transaction does not prove any receipt, whatever else may be worth.[21]

.Although the judgement from which these principles were derived was delivered at the beginning of this Century,

they have continued to serve as the guiding bacon till this day.

3.5 SECTION 14:

3.5.1 Legislative History:

This Section corresponds to Section 6 of the Act of 1922. Head 'B' which read as "Interest on securities" was omitted by the Finance Act, 1988, with effect from 1.4.1989. Likewise, the opening sentences are redrafted to bring out the intention clearly, namely, that the various heads of income are by way of classification of the total income and income-tax is not chargeable on each of them separately.

3.5.2 Analysis and Evaluation:

This Section requires that for the purpose of charge of income-tax and computation of total income, all income should be classified under the heads specified. For ach of the head specified, the Act has enacted distinct provisions to prescribe the principles for computing income.

Section 14 classifies all income, for the purpose of charge of income-tax and computation of total income, into six different heads, and it will be interesting to note the provisions applicable to each of the heads on the point

and then try to scrutinize them with a view to get an indication of the basis of taxability:

(A) Salaries:

Section 15 provides that -

(a) current salary (including that from former employer) is taxable on "due basis", that is accrual basis;

(b) advance salary is taxable on receipt basis; and

(c) arrear salary is taxable on receipt basis, if not subject to charge earlier on accrual basis under clause (a).

(C) Income from house property:

A notional annual value, determined in accordance with Section 23, is charged to income-tax under Section 22, presumably on accrual basis, although it is not, in some circumstances, exactly that.

(D) Profits and gains of business or profession:

An assessee may either keep account of the income and expenditure of his business or profession or may not, if not otherwise compelled by law, keep any such account. The income from business, etc., is chargeable to income-tax under Section 28. If the assessee has not maintained any account, his income is to be determined on available materials. It is not clear whether such income shall be determined on accrual basis or on receipt basis. It seems that the Income-tax Officer has to exercise his discretion on the facts

and circumstances of each case. If the assessee keeps accounts, Section 145 provides that the income shall be computed in accordance with the method of accounting regularly employed by the assessee. If the method of accounting is mercantile, the charge is no accrual basis; if the method is on cash basis, the charge is on the receipt basis, and the option is with the assessee to choose his method of accounting.

(E) Section 45 by using the expression "shall be deemed to be the income of the previous year in which the transfer took place", make this type of income chargeable to income-tax on accrual basis.

(F) <u>Income from other sources</u>:

This may be sub-divided into three types, namely -

(a) dividends, chargeable under Section 8 on declaration, distribution or payment, i.e. accrual basis for declared dividends; and receipt basis for deemed dividends, unless 'distribution' in terms of Section 2(22) takes place by credit entries in which case, it will be taxable on accrual basis;

(b) annuity due under Section 280-D on "due basis", i.e. accrual basis, and commuted value of any annuity paid under Section 280-D on receipt basis.

(c) hire, etc., from letting out of the machinery, etc. Section 56(2)(ii) and (iii) and other types of other sources of income under Section 56(1) would

follow the case of business income, i.e. under Section 145, the method of accounting regularly employed by the assessee, if the accounts are maintained.

Quite too often, 'heads of income' are thought to be same as the 'sources of income'. For the same head of income, however, there can be more than one source of income. The source of income is relevant for determining first whether it is assessable or non-assessable, and if it is not exempt from assessment, for deciding next under which of the heads enumerated in Section 14, the income has to be assessed.[22]

Further, the effect of Section 14 is to classify the income under different heads for the purpose of providing, for each, appropriate rules for the purpose of computing the total income. Hence, Section 14 is not a charging Section but its provisions are of mandatory nature.

Income-tax is one tax and not a collection of taxes on different items of income and assessment to income-tax is one whole and not a group of assessments of different items or heads of income. Thus, income assessed under one head cannot be assessed over again under another head and if an income from a source falls within a specific head set out in Section 14 of the Act, the fact that it may indirectly be covered by another head will not make the income taxable

under the latter head. It may not, however, be always easy to allocate income to its proper head.

Conversely, therefore, the obvious conclusion is that the income is not chargeable to tax unless it falls under any of the classified heads. We quote from a judgement delivered by the Supreme Court,

> *There is no warranty for the assumption that whatever is included in total income under Section 5 must be liable to tax, nor does Section 5 say so. It does not refer at all to chargeability to tax. Section 4(1) states that "... income-tax ...shall be charged ... in accordance with, and subject to the provisions of, this Act in respect of total income ...". This Section does not provide that the entire total income shall be chargeable to tax. It says that chargeability of an income to tax has to be in accordance with and subject to the provisions of the Act. The income is, therefore, to be brought under one of the heads in Section 14 and can be charged to tax only if it is so chargeable under the computing Section corresponding to that head. Furthermore, the expression "total income" in Section 4(1) has to be understood as it is defined in Section 2(45). Under that definition, total income means, "the total amount of income referred to in Section 5, computed for the purpose of chargeability under one or more of the Sections from Section 15 to Section 59. If an income cannot be brought to tax by computing under any of those Sections, it cannot be included in the "total income", as that word is understood in the Act, for the purpose of charge-*

*-ability. **It is income that cannot be taxed at all.** (Emphasis added).*[23]

3.6 SECTIONS 60 to 63:

3.6.1 Legislative History:

Section 60 of the 1961 Act corresponds to Section 16(1)(c) of the Act of 1922 and had been introduced for the first time in the year 1933. In the 1961 Act, the old Section has been extended into four Sections, that is Sections 60 to 63. These four Sections have not been subjected to any amendments since 1961.

3.6.2 Analysis and Evaluation:

Sections 60 to 63 have been,

> *...designed to overtake and circumvent a growing tendency on the part of taxpayers to endeavour to avoid or reduce tax liability by means of settlements. Stated quite generally, the method consisted in the disposal by taxpayer of part of his property in such a way that the income should no longer be received by him, while at the same time, he retained certain powers overs, or interest in, the property or its income. The Legislature's counter was to declare that the income of which the taxpayer had thus sought to disembarrass himself should notwithstanding be treated as still his income and taxed in his hands accordingly.*[24]

As such, under Sections 60 and 61, income which

arises to any person (a) by virtue of any "transfer" from assets remaining the property of the transferor, or (b) by virtue of a revocable transfer of assets, is deemed to be the income of the transferor and taxed as his income. Section 60 expressly provides that it applies to the transfers, though effected prior to the commencement of the Act.

It is obvious that these Sections are special provisionns which override the general rule in Section 4 that each person is taxed on his income; and the words "whether effected before or after the commencement of this Act" (1961 Act) are put in out of abundant caution. However, since the right to income may, itself be an asset, it is often difficult to decide whether what is transferred is income or an asset.

Section 61 relates to 'revocable transfer of assets' and should be read alongwith Section 62, which excludes certain revocable transfers. 'Revocable transfer' is defined in Section 63 and then whether it is saved by Section 62. If it is not saved, the income will be added to the transferor's total income. Provision for retransfer, even partially, will, however, attract Section 63 and the whole settlement will be considered 'revocable'.

Section 62 relates to 'transfer revocable for a specified period' and must be read along with Section 63,

which contemplates a settlement or disposal that is legally enforceable. The Section applies to cases where the income from the transferred assets arises directly to the beneficiary. If the income first arises to the settlor, who (even if under obligation) makes it over to the beneficiary, it is the settlor's income. For example, where what is settled is dividends from shares companies (since a company cannot pay dividends except to the registered shareholders), a deed of assignment of dividend (the shares themselves not being assigned) is only a contract to pay the income when received.

Section 63 defines 'transfer' and 'revocable transfer' for the purposes of Sections 60, 61 and 62. More precisely, the revocability of a transfer has been defined in clause (a) and the definition of a transfer has been given in clause (b). Over the years, the case law has been made richer through interpretations of various terms used in this Section and time and again, it has been proved that the terms 'transfer' and 'revocable' need not be absolute and may be contingent, so much so that a revocable transfer can include a revocable sale. Also, even a contingent power of re-transfer of assets in favour of others (i.e. not for the settlor's own benefit) would be within the fold of this Section.

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3.7 SECTION 64:

3.7.1 Legislative History:

Section 64, sum and substance, corresponds to Section 16(3) of the 1922 Act (introduced in the year 1937). Out of the six Sections of Chapter-V of the Income-tax Act, 1961, particularly Section 64 is in a perpetual state of undergoing amendments, alterations, modifications, deletions and re-introductions (as is evidenced by 'References' part of the preceding Chapter). It is but natural that the ingenuity of an individual in keeping as much income as possible out of the tax-net and the Legislature's endeavour to forestall such enterprise will continue to result in much reshaping, rewording and rephrasing of this Section. The aim of the Section is not merely to cover the cases of tax evasion or avoidance but to cover case of true partnership also. The scope of the Section is unrestricted and the Explanations attached to the Section abundantly make it clear that the Section should not be construed strictly and in an absolute sense; and all contingent meanings should also be taken into consideration.

It must also be noted that while Section 61 deals with transfers generally, Section 64(1) deals with a particular class of transfers, viz. transfers to one's spouse or minor child, or the son's wife or the son's minor child. But the

provisions of the two Sections are not mutually exclusive and a case of a transfer to any of the abovenamed relatives which does not fall within Section 64(1) may yet attract the operation of Section 61 and vice versa.[25] An important point of difference between the two Sections is that whereas the application of Section 61 is confined to revocable transfers of assets, Section 64(1) applies to irrevocable as well as revocable transfers.

3.8 SECTION 65:

3.8.1 Legislative History:

There is no corresponding Section in the 1922 Act and Section 65 was added in the 1961 Act in order to strengthen the machinery of collection. It has also been left intact since the commencement of the 1961 Act and has been spared any modifications, amendments, deletions to it.

3.8.2 Analysis and Evaluation:

Strictly speaking, this Section is beyond the scope of the topic of this Dissertation. Still, Sections 60 to 64 cannot be considered all by themselves without considering the implications of Section 65. Sections 60 to 64 provide for charge on an assessee in certain cases in respect of income which legally and beneficially belongs to another person; while Section 65 provides that in such

cases, the real recipient of the income would be liable to pay the tax assesseed and levied on another person but attributable to such income. To simplify, this Section provides for recovery of tax from the person to whom the income really belongs without an assessment being made on him; the tax being levied in all cases at the rate applicable to the assessee who is vicariously liable.

3.9 SUMMARY:

Thus, it is seen that Section 2(24) lays down the definitions of the various types of incomes, Section 4 levies the charge on the total income, Section 5 defines its range, Section 14 qualifies it and Sections 15 to 59 quantify it. Sections 60 to 64 try to catch the errant income in the tax net. Section 143 empowers the Income-tax Officer to assess the total income in the manner prescribed thereunder.

With this, we conclude the discussions about the significance of the income from Legislative and judicial viewpoints. The succeeding Chapter attempts to arrive at definitive conclusions and present certain meaningful suggestions.

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4. Kamakshya Narain Singh vs. CIT (1943) 11 ITR 513 (PC).
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6. Pondicherry Rly.Co. v. CIT, 5 ITC 363
7. CIT vs. Bengalee Urban Coop.Credit Socy. (1934) 3 ITR 121.
8. CIT v. M.A.Allagappan (1977) 103 ITR 1000 (Mad); CIT v. Vijoy Kumar (1975) 100 ITR 380 (Pat.)
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16. Asstt.Commr.of Urban Land Tax v. Bukingham & Carnatic Co.Ltd. (1970) 75 ITR 603 (SC).
17. Whitney v. Commissioners of Inland Revenue (1926) AC 37.
18. Laxmipat Singhania v. CIT (1969) 72 ITR 291, 294 (SC).
19. M.N.Patwardhan v. Commissioner of Expenditure Tax, Poona (1970) 78 ITR 338 350 (Bom.)
20. Parimesetti Seetharamamma v. CIT (1965) 57 ITR 532, 536 (SC); Also, H.E.H.Nizam's Religious Endowment Trust v. CIT (1966) 59 ITR 582, 587 (SC).
21. Extracted from the judgment delivered by Lord Lindley in: Gresham Life Assurance Society v. Bishop (1903) 4 TC 464 (476).

22. Janab A.Syed Jalal Sahib v. CIT (1960) 39 ITR 660, 671 (Mad.).

23. Nalinikant Ambalal Mody v. S.A.L.Narayan Row (1966), 61 ITR 428, 432, 433 (SC).

24. Maharajah of Pithampuram v CIT, 13 ITR 221 (PC) [under s.16(1)(c) of 1922 Act].

25. Tulsidas v. CIT, 42 ITR 1 (SC).

NOTE:

This Chapter is based on the Section-wise commentaries contained in:

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3. Palkhivala, N.A. and B.A.Palkhivala : "The Law and Practice of Income Tax", Eighth Edition, 1990;
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and the quotations from the judgments have been reproduced from these authoritative works.

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