CHAPTER - III

EVALUATION OF APPELLATE PROVISIONS

CHAPTER THREE
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3.1 INTRODUCTION:

In the present Chapter, an attempt is being made to discuss in some detail the statutory provisions of Sections 246 to 264 of Chapter-XX of the Income-tax Act, 1961, pertaining to the appeals and revisions. As already stated in Chapter One, the exercise of analysis and evaluation of these Sections concentrates on judging the spirit of these Sections and evaluate their significance and correlationship in the overall framework of the statute.

3.2 PART 'A' (SECTIONS 246 TO 252):

Within the provisions of the Income-tax Act, 1961, **Section 246** specifically enumerates in great detail the orders which are appealable to the Commissioner (Appeals). In case there is any ambiguity, the relevant provision must be construed in favour of existence of a right. Various case-law have also laid down that the right of appeal is to be liberally construed. In other words, the statutes pertaining to the right of appeal have to be given a liberal construction since they are remedial in nature. A right of appeal is not restricted or denied unless such a construction is unavoidable and in the absence of unmistakable indications to the contrary,

statutes regulating appeals are given liberal construction.

The first appellate authority, created under this section, is either the Deputy Commissioner (Appeals) or the Commissioner (Appeals). Broadly stated, an appeal lies to the Deputy Commissioner (Appeals) where the order under appeal is passed by the Income-tax Officer or the Assistant Commissioner against a non-corporate assessee; and it lies to the Commissioner (Appeals):

(a) where the appellant is a company,

(b) where the order is passed by or under the direction or with the approval of the Deputy Commissioner,

(c) the assessment is made by the Income-tax Officer or Assistant Commissioner and the amount of income assesseed or loss computed exceeds one lakh rupees.

In view of the comprehensiveness of the provisions of Section 246, a party aggrieved by the order of the statutory authority must, ordinarily, avail itself of the hierarchy of statutory remedies under the Act (such as an appeal or a revision or a reference) to the Court through the Income-tax Appellate Tribunal. This vertical judicial review given to him by the statute is a matter of right of the assessee. If he wishes to abandon this right and seek a collateral review of an impugned order in the Court under Articles 226 or 227 of the Constitution, he must make out a strong case why

the Court should entertain a writ petition and make an exception to the general rule. In fact, there are abundant case law where the Courts have departed from the normal rule of no-writ under the Income-tax Act. Some of the reasons for such departure are:

1. that the impugned order was passed without jurisdiction,
2. that it violates the rules of natural justice,
3. that it disclosed an error of law apparent on the face of the record,
4. that it was based on extraneous or malafide considerations,
5. that the statutory remedy was not adequate or was onerous,
6. that resort to the statutory remedy would cause irreparable injury to the petitioner,
7. that the impugned order infringes a fundamental right of the party, and
8. that the provision of law under which the order was passed is itself unconstitutional.

The appeal that is contemplated under **Section 247** is against the determination of the total income or loss of such a firm and the apportionment thereof between several partners. Section 247 gives a right to every partner of the firm to agitate any of these two matters in an appeal filed by him

against the firm's assessment. Beyond these two questions, viz. the determination of the total income or loss of the firm and its apportionment between the partners, a partner is not precluded from agitating any other point, if it arises in his individual assessment. Also, the ex-partner of a dissolved firm is entitled to prefer an appeal against the firm's assessment or an order of penalty against the firm.

Section 248 in terms refers to cases where a deduction has been made under the provisions of Section 195 and the deducted amount has been paid under the provisions of Section 200, by way of tax, by the person deducting it. A person seeking to file an appeal under Section 248 must comply with two requirements, namely, that he must have first deducted the tax under the provisions of Section 195 and must have paid the sum to the Government.

Where a person is so held, under Section 201, by the Department to be an assessee in default and he wants to contend that he was not liable to deduct tax at source, he may prefer an appeal under Section 246(1). On the other hand, an appeal under Section 248 is by a person, who had deducted and paid such tax at source, for a declaration, that under the law, he is not liable to make such deduction. This appeal is possible by a person, who, although deducts and pays, is in doubt whether he is at all liable to deduct and pay. In other words, under Section 248, a person who

denies his liability to make a deduction under Section 195 and to pay the amount deducted can prefer an appeal only if he has actually deducted and paid the tax.

Section 249 lays down the form of appeal and limitation period for filing the appeal. The Section is of technical nature and should be read with Rules 45 and 46 of the Income-tax Rules, 1962. Further, the provisions of Section 249(4) are of both substantive and mandatory nature.

Section 250 deals with the procedure in appeals. Section 250(1) provides that the Deputy Commissioner (Appeals) shall fix a date of hearing and give notice thereof, with the information about the time and place of hearing to the appellant as well as to the Income-tax Officer against whose order the appeal has been filed. Section 250(2) grants the appellant as well as the Income-tax Officer concerned a right to be heard by the Deputy Commissioner (Appeals). This right to be heard includes a right to be heard through an authorised representative. The appellate authority has the legal duty to hear and dispose of the appeal. It cannot refuse to exercise that jurisdiction. Section 250(3) empowers the appellate authority to adjourn the hearing of the appeal from time to time. Such power is, otherwise, an inherent and necessary power vested in an appellate authority to adjourn the hearing of an appeal on any just and sufficient ground, either on his own motion or on the application of any

of the parties to the appeal. Section 250(4) empowers the appellate authority, before disposing of an appeal, to make such further enquiry himself as he thinks fit or to direct the income-tax officer to make further enquiry on the lines required by him. In the latter circumstances, the income-tax officer conducts such enquiry and reports the results thereof to the appellate authority and the latter disposes of the appeal in the light of such report. These provisions are similar to those contained in Order XLI, Rule 25 of the Code of Civil Procedure.

The provision seems to be based on the fact that before the appellate authority is, generally, no opposite party. The appellate authority himself is the departmental authority representing the revenue. Therefore, he has been invested with the power of making further enquiry. He does not exceed his jurisdiction if he asks or allows the assessee-appellant to produce or file additional papers or additional evidence in the manner he thinks fit. The appellate authority also has unfettered power to inquire, or cause inquiry to be made, on any point whatsoever, whether it is taken in appeal or not. The authority, even in setting aside an assessment and directing a fresh assessment to be made, may also direct the officer to include in such fresh assessment any such, which, in the opinion of the former, may be chargeable to tax, independent of the question whether or not

that sum was the subject matter of the appeal before him.

Section 250(5) empowers the appellate authority to allow the appellant to go, at the hearing of an appeal, into any ground not taken in the grounds of appeal submitted by him, if the authority is satisfied that the omission to take that ground in the grounds of appeal was not wilful or unreasonable. Section 250(6) provides that the orders of the appellate authority disposing of the appeal shall be in writing. Such orders are to state the points arising in the appeal, the decision of the authority thereon and the reasons for such decision. This is more so because such orders are subject to further appeal to the appellate tribunal. Order XLI, Rule 31 of the Code of Civil Procedure requires an appellate court, in civil matters, to state: (i) the points for determination, (ii) the decision thereon, (iii) the reasons for the decision, and (iv) the relief, if any, to which the appellant is entitled. Section 250(7) enjoins that such orders shall be communicated both to the appellant as well as to the commissioner.

The intention of the Legislature is to make the appellate authority in tax matters a watch-dog in the general public interest and particularly on behalf of the public revenues. The appeal once filed by an assessee has to be disposed of only on its merits because a duty is cast on the appellate authority to consider not only the question in

in the interest of the assessee but also in the larger interest to see whether the assessee has been under-assessed; and in the latter event, to enhance the assessment. The power of withdrawal is linked with the power of enhancement with the result that neither withdrawal by the appellant nor ex-parte dismissal for default is available to an appeal filed.

Section 251 outlines the powers of the appellate authority in disposing of an appeal and these are much wider than the powers of an ordinary court of appeal. Under the Income-tax Act, once an assessment comes before the Appellate Assistant Commissioner, his competence is not restricted to examining those aspects of the assessment which are complained of by the assessee, but ranges over the whole assessment and it is open to him to correct the Income-tax Officer not only with regard to a matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Income-tax Officer and determined in the course of the assessment. There is one limitation to this power of revision, namely, it is not open to the Appellate Assistant Commissioner to introduce in the assessment new sources of income and the assessment must be confined to the subject matter of the original assessment.

In fact, the powers conferred on the Appellate Assistant Commissioner under this Section range far and wide

and include: right to take evidence not adduced before the Income-tax Officer, production of additional evidence, power to consider untraversed grounds, power to order fresh assessment on remand, power to change the head of income, power to sustain addition on different ground, power to confirm, reduce, enhance, annul or set aside the order. The powers exercised by the Appellate Assistant Commissioner in disposing of an appeal filed before him are of quasi-judicial nature. Such powers cannot be controlled by the directions or instructions issued by the Central Board of Direct Taxes.

3.3 PART 'B' (SECTIONS 252 to 255):

Section 252 lays down the constitution of the Appellate Tribunal, which is the fact-finding authority. Moreover, the Income-tax Appellate Tribunal is not an income-tax authority but it is constituted and functions under the Union Ministry of Law and not under the Union Ministry of Finance which controls the Income-tax Department. The Tribunal is constituted of two classes of members, namely, judicial members and accountant members. A judicial member is ordinarily appointed to be the President of the Tribunal.

The powers and functions of the Tribunal are laid down in Sections 253, 254 and 254 [and also in Section 269(G)] of the Act. It has further been actively referred to in Sections

256, 257, 258 and 260. The Tribunal has merely appellate functions. Also under Section 245M(3), on receipt of an application under Section 245M(2) from an assessee-appellant who intends to file a settlement application to the Settlement Commission, the Tribunal has to grant permission to withdraw the appeal for the purpose specified in Section 245(M).

When one attempts a microscopic examination of the provisions of sub-section (1) of **Section 253,** it is revealed that an assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order:

(a) An order passed by the Appellate Assistant Commissioner:

(i) under section 131(2), imposing a fine for intentional non-compliance with a summons to attend and give evidence or produce books of account or other documents, etc.;

(ii) under Section 154, rectifying any mistake apparent from the record in an order passed by him under Section 250 or Section 271;

(iii) under Section 250, disposing of an appeal filed by an assesee;

(iv) under Section 271, imposing a penalty for failure to furnish returns, comply with notices, concealment of income, etc.;

(v) under Section 271A, imposing a penalty for failure to keep, maintain or retain books of account, docuuments, etc.; or

(vi) under Section 272A, imposing a penalty for failure to answer questions, sign statements, allow inspection, etc.

(b) An order passed by the Inspecting Assistant Commissioner:

(i) under Section 154. It may be noted that with effect from April 1, 1976, the Inspecting Assistant Commissioner has ceased to have powers under Section 154; or

(ii) under Section 272A, imposing a penalty for failure to answer questions, sign statements, allow inspection, etc.

(c) An order passed by the Commissioner -

(i) under Section 263, revising any order including an order of assessment passed by the Income-tax Officer which he considers to be prejudicial to the interests of the revenue;

(ii) under Section 272A, imposing a penalty for failure to answer questions, sign statements, allow inspection, etc.

(iii) under Section 285A, imposing a fine on a contractor contravening the provisions of that Section by not sending the information required to be sent under Section 285A(1); or

(iv) under Section 154, rectifying his order passed under Section 263 in a suo motu revision.

Section 253(2) grants a right of appeal to the Commissioner if he is aggrieved of any part of the order passed by the Appellate Assistant Commissioner under Section 250 disposing of an appeal. Such appeal of Commissioner may cover not only the merits of the order passed by the Appellate Assistant Commissioner but also what that officer has omitted to do in his order. In other words, the objection of the Commissioner is not necessarily confined to what the order states but may extend to what the order has omitted to say. The appeal will not be held to be not maintainable only because the Tribunal might find that the Appellate Assistant Commissioner himself had no jurisdiction to make a direction. That would be an order on the merits not affecting the maintainability of the appeal. It may be seen that in this respect Section 253 differs from Section 246. Section 246 grants a right onlyy to the assessee to appeal to the Appellate Assistant Commissioner, but Section 253 grants a right of appeal to both, the assessee as well as the Commissioner. Interestingly, if, as a result of an order passed in an appeal by the Appellate Assistant Commissioner, a person who is not a party to that appeal is saddled with a liability for any tax or other sum, he may well appeal against that order to the Appellate Tribunal. The right of appeal to the Tribunal

(or the right to apply for a reference) is not confined technically to the person who is a party to the first appeal; but it is a much wider right exercisable by any other person so becoming liable.

Section 253(3) deals with the period of limitation for preferring appeal to the Tribunal; and under Section 254(4), a memorandum of cross-objection may be preferred to the Tribunal (by the respondent to an appeal) within thirty days of the receipt of notice than an appeal has so been preferred. Section 253(5) authorizes the Tribunal to admit an appeal or a memorandum of cross-objections even after the expiry of such limitation period, if it is satisfied that there was sufficient cause for not presenting it within that period. No doubt, the question whether there is sufficient cause to admit an appeal filed out of time is purely a matter for determination in exercise of the discretion of the Tribunal; but that discretion has to be exercised judicially. If there is no exercise of the discretion at all, or if it is exercised arbitrarily or whimsically, it would be a cause of failure to exercise jurisdiction or an illegal exercise of it.

Section 253(6) prescribes that an appeal, etc., to the Tribunal shall be in the prescribed form and shall be verified in the prescribed manner. Rule 47 of the Income-tax Rules, 1962, prescribes that an appeal shall be in Form 36

and a memorandum of cross-objection shall be in Form 36A appended to the Rules.

Section 254 deals with further procedural aspects and more specifically with the powres of the Appellate Tribunal. In interpreting the powers of the Tribunal, the nature of the Tribunal's jurisdiction assumes greater significance. In dealing with the appeals before it, the Tribunal is exercising statutory authority and a statutory duty which it is bound to carry out. It is to exercise its judgment on such material as comes before it and to obtain any material which it thinks is necessary and which it ought to have, and on that material to find the facts and decide the issues which the law requires it to do. It is deciding or estimating an amount, if any, on which, in the interests of the country at large, the taxpayer ought to be taxed. It is established principle of law that the powers conferred by an enabling statute include not only such as are expressly granted but also, by implication, all powers which are reasonably necessary for the accomplishment of the object intended to be secured.

The Appellate Tribunal is a judicial body exercising judicial powers under the statute. It is not empowered to employ its jurisdiction arbitrarily. Whatever it does must be done in consonance with sound judicial principles and in accordance with well-accepted doctrines applicable to judicial bodies. The power conferred on the Tribunal to

pass "such orders thereon as it thinks fit" in respect of an appeal before it must be exercised within the limits which can be discovered by reference to the jurisdiction to the authority whose order has given rise to the appeal. What the Tribunal primarily is entitled to do is to determine the objections raised by the applicant before it, and the word 'thereon' in Section 254(1) limits the jurisdiction of the Tribunal to the subject matter of the appeal. This, however, does not preclude the Tribunal from determining the matter on the basis of facts which have been canvassed before the Income-tax Officer and the Appellate Assistant Commissioner, on which a finding may have been recorded by either of the two authorities, but which finding did not become necessary for the determination of the assessment because a particular view was taken in the income-tax proceedings, which the Tribunal dissents from; or the same position is reached where the Tribunal may accept that view, but upon a reference the view is held to be not justified by the High Court. As the Tribunal has wide powers in respect of subject matter of an appeal before it, it can decide anny question which is material to the subject matter even though it was not specifically raised.

The subject matter cannot be extended even by the appellant unless leave is granted to him to do so by the Appellate Tribunal. The subject matter can certainly

not be expanded by the respondent if he has not either appealed or cross-objected. Properly speaking, the object of a tax appeal is the relief sought by the assessee and objected to by the Department.

The Income-tax Appellate Tribunal, however, cannot be said to be a court governed by the Code of Civil Procedure. Under Section 255(5), the Appellate Tribunal has power to regular its own procedure and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, and in exercise of such powers, the Income-tax (Appellate Tribunal) Rules, 1963, have been made to be applicable to the Tribunal. These rules govern the procedure in relation to the proceedings before the Tribunal.

In the hierarchy of authorities set up under the Act, the Appellate Tribunal is superior to the Appellate Assistant Commissioner or the Income-tax Officer, who is bound by the orders of the Tribunal, which will be as effective as the orders of the High Court so far as their binding character on him is concerned. Merely because the department or the assessee has pursued the matter in reference proceedings, it does not act as a kind of stay of operation of the order of the Tribunal. So long as an order of the Tribunal is not set aside, the Appellate Assistant Commissioner or the Income-tax Officer is bound to give effect to it,

and his failure to do so on the ground that the reference proceedings are pending will be really a contempt of the Tribunal's order. Though it is open to the Appellate Assistant Commissioner or the Income-tax Officer to take his own view on the facts, so far as the law propounded by the Tribunal is concerned, it is binding and should be applied to the facts before him.

Section 255 deals with the procedure of the Appellate Tribunal. Section 252 provides for appointment by the Central Government, of judicial members and accountant members and also for the appointment of one of the judicial members as the President of the Appellate Tribunal. Section 255(1) enacts that the powers and functions of the Appellate Tribunal shall be exercised and discharged by the Benches of the Tribunal, which shall be constituted from amongst the members of the Tribunal by the President of the Appellate Tribunal.

Section 255(2) provides that ordinarily a Bench shall consist of two members, one judicial and one accountant. Such a Bench shall be competent to discharge all functions and exercise all powers of the Tribunal. Section 255(3) provides for exercise of all powers and discharge of all functions of the Tribunal by a Bench consisting of a single member only, but such single-member Bench may dispose of cases where the total income of the assessee, as computed

by the Income-tax Officer, does not exceed Rs.40,000. Section 255(3) provides for constitution of a larger Bench consisting of three or more members. Such Special Bench may be constituted by the President for the disposal of a particular case or cases. Atleast one of the members of such a larger Bench must necessarily be a judicial member and one an accountant member. Section 255(4) enacts that if the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority. If the members are equally divided, they shall state the point or points on which they differ and the case shall be referred by the President of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

Section 255(5) provides that, subject to the provisions of the Act, the Appellate Tribunal shall have the power to regulate its own procedure and the procedure of its Benches in regard to all matters concerning or arising out of the exercise of the powers and discharge of the functions of the Tribunal and also about the places at which the Benches will hold their sittings. Section 255(6) invests the Tribunal, for the purpose of discharging its function, with all the

powers which are vested in the income-tax authorities under Section 131 regarding discovery, production of evidence, summoning witnesses and enforcing their attendance and compelling production of their books of ccounts or other documents and issuing commissions, etc. Section 255(6) further provides that the proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code.

3.4 PART 'C' (SECTIONS 256 TO 260):

Sections 256 to 260 provide for questions of law arising out of the Tribunal's order to be referred to the High Court or the Supreme Court and for the disposal by the Tribunal of the case conformably to the advice rendered by the Court. Section 265 provides that notwithstanding any such reference, tax shall be payable by the assessee as per Tribunal's decision. Section 269 specifies the different HHigh Courts and the States or Union Territories wherefrom a reference shall go to the particular High Court.

Section 256(1) requires the Tribunal, if it thinks that a reference is to be made, to draw up a statement of the case and refer it to the High Court within one hundred and twenty dayys of the receipt of the application for reference. Section 256(2) entitles an assessee or the

Commissioner, if an application was made to the Tribunal under Section 256(1) and the Tribunal refused to state the case on the ground that no question of law arises, to make an application to the High Court to require the Tribunal to state the case and to refer it to the High Court. The party aggrieved of the Tribunal's such refusal order may, within six months from the date on which he is served with notice of such refusal, make such an application under Section 256(2). The Section also affords a procedure which may be adopted by the aggrieved party only if the circumstances mentioned inn the sub-Section exist, namely -

(i) that a valid application under Section 256(1) was made by him to the Tribunal requiring the latter to refer to the High Court a question of law arising out of the Tribunal's order passed under Section 254; and

(ii) that the Tribunal refused to state the case on the ground that no question of law arose out of the Tribunal's order under Section 254.

A combined reading of sub-Sections (1) and (2) of Section 256 shows that it is only the asseesee or the Commissioner, whoever has preferred an application under Section 256(1) and is aggrieved by the refusal of the Tribunal to state a case for the opinion of the High Court, that can approach and invoke the jurisdiction of the High Court under Section 256(2). In this view of the matter, an application

under Section 256(1) and obtaining a refusal thereon is not maintainable.

Section 257 can come into operation only where -

(a) an application under Section 256(1) has been made to the Tribunal, requiring it to refer certain questions of law to the High Court;

and the Tribunal is of the opinion that -

(b) a question or questions of law arise out of its order under Section 254, which need to be referred to the court;

(c) there is a conflict of judicial opinion amongst different High Courts in respect of any such questions; and

(d) it is expedient that a reference should be made direct to the Supreme Court.

In such circumstances, the Tribunal has the power to draw up a statement of the case and refer it, through its President, to the Supreme Court direct.

The terms of **Section 258** are wide but they can be attracted only on the fulfilment of the basic condition that the Court must find itself unable to determine the question of law raised by the Tribunal upon the statement in the case referred. In other words, if the Court feels that in order to answer satisfactorily the question referred to it, it is necessary to have additional material included in the statement of thee case, the Court can make an appropriate

direction in that behalf. Similarly, if the Court is satisfied that some alterations should be made in the statement of the case to enable it to determine the question satisfactorily, it can made an appropriate direction in that behalf.

Section 259(1) provides that a reference, when made to the High Court, shall be heard by a Bench of not less than two judges of the High Court. If the decision of the Bench is not unanimous, the reference shall be decided and answered in accordance with the opinion of the majority of such judges. Whereas, however, there is no such majority opinion and the judges hearing the reference are equally divided in their opinion, Section 259(2) provides that the judges shall state the point or points of law upon which they differ and the case shall then be heard upon that point only by one or more of the other judges of the High Court. In such matters, such point has to be decided according to the opinion of the majority of the judges who have heard the case either initially or substantially.

Section 260 refers to the hearing of the reference made to the High Court or the Supreme Court. This section also indirectly relates to the nature of jurisdiction of the High Court in disposing of a reference. It has been said in some cases that it is an advisory jurisdiction, which character follows from the feature that the High Court answers only the questions raised and that it does not deal with

questions of fact but deals with questions of law. But this jurisdiction, even though it might be called advisory in that sense, is not merely precatory or persuasive or on voluntary requests which could be either accepted or rejected. In that sense, it is compulsory and is binding not only on the parties but also upon the Tribunal which is directed by the statute to act conformably to the judgment, even though it is not in the form being susceptible to execution as understood in ordinary civil cases. Section 260(2) expressly provides that the fee for making the reference shall not form part of the costs which may be awarded.

3.5 PART 'D' (SECTIONS 261 AND 262):

Section 261 grants a right to a party aggrieved of the High Court's judgment in an income-tax matter to appeal to the Supreme Court therefrom in any case which the High Court certifies to be a fit case for appeal to the Supreme Court. This right of appeal is, therefore, conditional and may be availed of only if the High Court gives a certificate of such fitness.

An appeal to the Supreme Court from a decision of the High Court on a reference is a continuation of the reference proceedings and an application for leave to appeal is a step preliminary or incidental to such an appeal.

The tests of a 'fit case' or, in other words, what forms the foundation for granting a certificate of fitness for appeal to the Supreme Court under Section 261 have been laid down in a number of judicial decisions arising out of cognate provisions of Sections 109 and 110 of the Code of Civil Procedure (Section 262 of the Income-tax Act makees the provisions of the Code applicable) and Article 133 of the Constitution of India.

It is also seen that the jurisdiction of the Supreme Court arising in appeal over the judgment of the High Court on a reference under the Income-tax Act is also advisory. The Supreme Court can only record its opinion on questions which are referred, not on questions which could have been but have not been, referred or on a different question. It is not the function of the Supreme Court to re-examine the evidence on record. That was the function of the Tribunal. All that the Supreme Court has to see is whether the Tribunal had departed from the well-established principles in arriving at its finding.

The decisions of the Supreme Court are, under Article 141 of the Constitution, binding on all Courts within the territory of India, and so, it must be the constant endeavour and concern of the Supreme Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise of the

Court's power to review its earlier decisions on the ground that the view expressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must consistently be avoided.

At the same time, the Supreme Court has the power to review its own decisions. The power of review must be exercised with due care and caution and only for advancing the public well-being in the light of the surrounding circumstances of each case brought to its notice. It is not right to confine that power within rigidly fixed limits as where a material provision of law has been overlooked in the previous decision or where that decision has proceeded upon the mistaken assumption of the continuance of a repealed or expired statute. There is nothing in the Constitution of India which prevents the Supreme Court from departing from a previous decision if it is convinced of its error and its baneful effect on the general interests of the public.

Section 262(2) clearly provides that the costs of such appeal may; in the discretion of the Supreme Court, be awarded to the successful party. The parties may also be directed to bear their respective costs throughout.

3.6 PART 'E' (SECTIONS 263 AND 264):

The Department has no right of appeal to the Commissioner of Income-tax (Appeals) against any order passed by the Assessing Officer. Therefore, **Section 263** has been enacted to arm the Commissioner with the power of revising any order of the Assessing Officer where the order is erroneous and the error has resulted in prejudice to the interests of the revenue, the Commissioner must come to a firm conclusion on this point.

The provisions of Section 263 are not ultra vires and do not offend Article 14 of the Constitution. The Section does not give the Commissioner an arbitrary power. The words "prejudicial to the interests of the revenue" in Section 263 mean that the orders of assessment challenged are such as are not in accordance with the law, in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. The class of persons in respect of whom such orders can be passed is a well-defined class in respect of whom there is an intelligent differentia.

A proceeding under **Section 264** is thought of by the Legislature only o meet the situation faced by an aggrieved assessee who is unable to approach the appellate authorities for relief and has no other alternative remedy under this Act. As this procedure in revision is essentially

involves the adjudication of rights and liabilities of parties, it is undoubtedly a quasi-judicial proceeding in the disposal of which the statutory authority ultimately vests or divests rights of citizens, it should not lightly use their discretion and refuse to interfere on grounds which are neither reasonable nor proper. A public duty is imposed on the revisional authority not only to entertain such application but to deal with the same in accordance with law and after giving the aggrieved party a reasonable opportunity of being heard as the discretion vested in him is a judicial discretion and has to be exercised judiciously.

The power of revision conferred by Section 264 on the Commissioner is not an administrative power but it is quasi-judicial power. In the exercise of this power, the Commissioner must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the dispute according to the procedure consistent with principles of natural justice. He cannot permit his judgment to be influenced by matters not disclosed to the assessee. Section 263 applies to the orders passed only by an Income-tax Officer. On the other hand, Section 264 has application to an order passed by an authority subordinate to the Commissioner. Explanation 2 to Section 264 enacts that for the purposes of Section 264, the Appellate Assistant Commissioner shall be deemed to be an authority subordinate

to the Commissioner. An order passed by an Appellate Assistant Commissioner, an Inspecting Assistant Commissioner, an Income-tax Officer or an Inspector of Income-tax may, therefore, be revised, suo motu or on an application under Section 264, by the Commissioner.

3.7 SUMMARY:

It is evident from the foregoing discussions that the entire procedure of appeals and revisions under the Income-tax Act, 1961, though thoroughly codified, is much too intricate for a lay taxpayer to understand and follow through. The route for seeking relief is also fraught with highly complex legal technicalities and administrative bottlenecks and eventually, time-consuming and labourious at every step. Added to it is the adoption of Code of Civil Procedure for complying with certain legal formalities while major procedural aspects have been kept out of its pail. The collective effect is that for an honest taxpayer, seeking of justified and due relief at the hands of the administrative machinery is a leisurely and costly affair.

Accordingly, the major conclusions arrived at at the end of the present evaluation have been formulated in the succeeding Chapter together with an attempt at offering such meaningful suggestions for simplifying and streamlining the appellate procedure as is felt justified.

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