

A CRITICAL ANALYSIS OF DIRECT TAXES IN INDIA

A DISSERTATION TO BE SUBMITTED IN PARTIAL  
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF  
DEGREE OF MASTER OF LAWS

**Submitted BY**

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**BBD UNIVERSITY**

SESSION 2022-23

## CERTIFICATE

This is to certify that the dissertation titled, “A CRITICAL ANALYSIS OF DIRECT TAXES IN INDIA.” is the work done by RAM CHANDRA SINGH. under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her/his success in life.

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(CORPORATE AND COMMERCIAL LAW)

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## **IV-ABBREVIATIONS:**

1-AOP	Association of person
2-AJP	Artificial Juridical person
3- AO	Assessing officer
4- ACIT	Assistant commissioner of Income tax
5- AMT	Alternate minimum tax
6- BC	Business connection
7-BOI	Body of individuals
8-CBIC	Central Board of Indirect Taxes and Customs
9-CFC	Controlled Foreign Corporation
10-CFC	Controlled financial corporation
11- CBDT	Control Board of direct Tax
12- CIT	Commissioner of income tax
13- CT	Corporation Tax
14-CGT	Capital gain tax
15-CCIT-C	The Chief Commissioner of Income Tax – Central
16- CBIC	Central Board Of Indirect Tax and Customs
17--CBEC	Central Board of Excise and customs manages policy
18-CGT	Capital Gain Tax
19-DTAA	Double Taxation Avoidance Agreement.
20-DGIT(L&R)	Directorate General of Income tax(Legal & research)
21- FST	Fees for Technical Services
22- FEMA	Foreign Exchange Management Act
23-GAAR	General Anti Avoidance ruler
24-GST	Goods and Service Tax
25-GDP	Gross Domestic Product
26- GAV	Gross annual value
27-HUF	Hindu undivided Family

28- IFSC	International Financial services
29- ITDMS	Integrated Tax Payer Data Management System
30-ITAT	Income-tax appellate Tribunal
31- ITR	Income tax return
32- IT	Income Tax
33-LLP	Limited liability Partnership
34-MAT	Minimum alternate connection
35-MMR	Maximum marginal rate
36-NTT	National Tax tribunal
37-NAV	Net annual value
38- NR	Non resident
39-PAN	Permanent Account number
40-POEM	Concept of place of effective management
41-PE	Permanent establishment
42- PCIT	Principal Commissioner of Income tax
43-PIT	Personal income tax
44-ROR	Resident and ordinarily resident in India
45-RNOR	Resident but not ordinarily resident in India
46-SAT	Self Assessment Tax
47-R& TC	Revenue and Taxation Code
48- SA	Self Assessment
49-STT	Securities Transaction Tax
50- TDS	Tax deduction at source.
51-TCS	Tax collection at source.
52-TPS	Tax Payer Services
53- TI	Taxable income tax
54-TAN Tax	Deduction and collection account number
55-TIN	Tax payer identification number
56- U/S	Under section
57-VAT	Value Added Tax



## **V- LIST OF CASE STUDY**

### **STUDY CASE NO -1 CENTRAL INFORMATION COMMISSION,**

F.No.CIC/AT/A/2008/00240 & 00241 Dated 21st February, 2007

Appellant: Ms.Neeru Bajaj 'Sheel Vansh', B-131, Sector C, Mahanagar,

Lucknow-226 006.

Respondents : Shri D.C. Pant, Commissioner of Income Tax-II & CPIO, Department of  
Income Tax, Lucknow.

Shri Vinod Kumar, Chief Commissioner of Income Tax & Appellate  
Authority, Department of Income Tax, Lucknow.

### **STUDY CASE NO-2 CENTRAL INFORMATION COMMISSION**

F.No.CIC/AT/A/2008/00240 & 00241,

Dated, the 31st July, 2008.

Appellant : Shri Dinesh L. Salvi

Respondents : Directorate General of Income Tax (Investigation)

**STUDY CASE NO- 3** What is the nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time – a capital receipt or a revenue receipt?

CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)

**STUDY CASE NO-4** Can national interest on security deposit given to land lord in respect of residential premises taken on rent by the employer and provided to the employee, be included in the perquisite value of rent freeaccommodation given to the employee?

Ans: CIT v. Shankar Krishnan (2012) 349 ITR 0685 (Bom.)

**STUDY CASE NO-5** Under what head of income should income from letting out of godowns and provision of warehousing services be subject to tax - "Income from house

property” or “profits and gains of business or profession”?

CIT v. NDR Warehousing P Ltd (2015) 372 ITR 690 (Mad)

**STUDY CASE NO-6 INCOME ON ACCRETION NOT TO BE CLUBBED**

Commissioner of Income-Tax vs M.S.S. Rajan on 20 June, 2001

**STUDY CASE NO-7 CIT Vs. Anil Hardware Store (2010) 323 ITR 0368 (HP)**

**STUDY CASE NO-8 INCOME-TAX OFFICER V. VENKATESH PREMISES CO-OPERATIVE SOCIETY LTD. (SC)**

Whether certain receipts by co-operative societies from its members (non-occupancy charges, transfer charges, common amenity fund charges) are exempt based on the doctrine of mutuality?

**STUDY CASE NO-9 RAJ DADARKAR AND ASSOCIATES V. ASSISTANT COMMISSIONER OF INCOME TAX (SC)**

Whether rental income earned from letting out of premises is to be treated as business income or as income from house property?

**STUDY CASE NO -10 CENTRAL INFORMATION COMMISSION**

Room No.308, B wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066

Appeal No. CIC/AT/A/2008/00628

Appellant: Shri Milap Choraria

Public Authority: Central Board of Direct Taxes

Date of Hearing: 13/05/2009

Date of Decision: 15/06/2009



Date of Hearing : 18.12.2007

Date of Decision : 11.2.2008.

**STUDY CASE NO-13 CENTRAL INFORMATION COMMISSION**

F.No.CIC/AT/A/2007/01023 Dated, the 20th December, 2007.

Appellant : Dr. Roop, Roop Netralaya, Opp. NAS College,  
E.K. Road, Meerut.

Respondents : Shri Anand Deep, Director of Income Tax (Inv)  
& CPIO, Office of Director  
General of Income Tax (Inv), 16/63 Anand Nikunj,  
Civil Lines Kanpur-208 001.

Shri Vineet Sahai, Director General of Income Tax (Inv) &  
Appellate Authority, Aayakar Bhawan, 5 Ashok Marg,  
Lucknow-226 001.

This is a second-appeal filed by the appellant (Dr.Roop) against the order dated 9.5.2007 of the Appellate Authority (AA), corresponding to the RTI-application of the appellant dated 9.3.2007 and the CPIO's reply of 12.4.2007 thereof

**STUDY CASE NO -14 CENTRAL INFORMATION COMMISSION**

F.No.CIC/AT/A/2007/00781 Dated, the 10th December, 2007.

Appellant : Ms.Alka Mehta, H.No.F-3D, Saket, New Delhi-110017.

Respondents : Shri S.S. Rathore, Commissioner of Income Tax & CPIO,  
Central-III, Income Tax Department, Room No.325, ARA

Centre, E-2 Jandewalan Extension, New Delhi-110 055.

Shri Suresh Trikha, Chief Commissioner of Income Tax &  
Appellate Authority, Income Tax Department, Room No.325,  
ARA Centre, 3rd Floor, E-2, Jhandewalan Extension, New  
Delhi-110 055.

This is a second-appeal filed by Ms.Alka Mehta (appellant) against the order of the Appellate Authority (AA), dated 15.5.2007. The appellant had filed her RTI-application before the CPIO, Shri S.S. Rathore on 16.3.2007 and received a response on 9.4.2007.

**STUDY CASE NO -15** CENTRAL INFORMATION COMMISSION

F.No.CIC/AT/A/2007/00349

Dated, the 21st June, 2007

Appellant : Shri Vasant Shankar Patwardhan, 10/177 Shree Parleshwar Coop  
Housing Society Ltd., Shahaji Raje Marg, Vile Parle-East,  
Mumbai-400 057.

Respondents : Shri L.R. Nayyar, Commissioner of Income Tax-21,Mumbai &  
CPIO, C-11,Room No.612, Pratyakshakar Bhavan BandraKurla  
Complex, Mumbai-400 051.

Appellate Shri Shaikh Naimuddin, Chief Commissioner of Income Tax-XI &  
Authority, Office of the Chief Commissioner of Income Tax-XI ,  
R.No.539 Aayakar Bhawan, M.K. Road, Mumbai-400 020.

**STUDY CASE NO-16** CENTRAL INFORMATION COMMISSION

F.No.CIC/AT/A/2007/00017

Dated, the 28th March, 2007.

Appellant : Shri S.P. Goyal, Chand Temple of Peace, 2C & 3C,

Sarabha Nagar, Ludhiana – 141 001.

Respondents :                      Shri Roshan Sahay, Director of Income Tax (Inv) & CPIO,  
Office of the Director of Income Tax (Inv), Ludhiana  
Shri V.D.S. Balahara, Director General of Income Tax (Inv)  
& Appellate Authority, office of the Director General of  
Income Tax (Inv), Chandigarh.

The appellant, Shri S.P. Goyal has challenged through a second appeal before the Commission the order of the Appellate Authority (AA), Shri V.D.S. Balahara, Director General of Income Tax (Inv), which was dated 23.10.2006. The AA had upheld the order dated 20.9.2006 of the CPIO corresponding to the RTI-request of the appellant, which dated 18.8.2006.

CHAPTER-1 INTRODUCTION----- (1-19)

1.1 OBJECTIVE

1.2 HYPOTHESIS

1.3 RESEARCH PROBLEM

1.4 RESEARCH QUESTION

1.5 RESEARCH METHODOLOGY

# **1-INTRODUCTION:**

The general growth and development of any nation is the most significant capacity of the government. Every one of the exercises which establishes growth and development needs money. Government raises money through taxes. In the expressions of Dalton 'Tax is a necessary commitment forced by a public authority independent of the definite measure of administration rendered to the tax payer consequently and not forced as a punishment for any legitimate offense. Tax is perpetual instrument for gathering revenues. The gathering of taxes is separated into direct and indirect tax. Income tax is ordered into direct tax. Tax is the real wellspring of income for the government, the improvement of any nation's economy to a great extent relies upon the tax structure it has received. A Taxation Structure which encourages simple of working together and getting no opportunity for tax evasion conveys flourishing to a nation's economy. This Research Study studies the tax system in India and its impact on economic growth.

Tax system thought not to contain a predisposition for a specific group of taxpayers. It is not necessarily the case that dynamic rate of taxation is inapplicable. The second thought is that the tax system must have appropriate economic impacts and ought not debilitate the motivator to work, spare, and go out on a limb. The third prerequisite is that the tax system must be far reaching and basic and must make for effectiveness of the organization and anticipate expansive scale tax evasion.

I can get the evidence of presence of taxation in India from Manusmtri and Arthashastra. .According to Manusmtri and Arthashastra, agriculturist, traders, and business persons had to pay fixed rate of their earning. In case of Manusmtri and Arthashastra. traders they need to pay one fifth of their profits in gold and silver. Similarly Kautliya emphasized in Arthashastra on the part of removing arbitrariness in case of taxation. Kautliya mentioned about the duties , taxes which one had to pay at the time of war or emergencies. In most of the times, Common people had to deposit certain fixed share of earning to the king.[1]<sup>1</sup>

"It was only for the good of his subjects that he collected taxes from them, just as the

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<sup>1</sup> <https://incometaxindia.gov.in/pages/about-us/history-of-direct-taxation.aspx>



Sun draws moisture from the Earth to give it back a thousand fold" ----- **Kalidas**  
**in**  
**Raghuvansh eulogizing KING DALIP.**

It is a matter of general belief that taxes on income and wealth are of recent origin but there is enough evidence to show that taxes on income in some form or the other were levied even in primitive and ancient communities. The origin of the word "Tax" is from "Taxation" which means an estimate. These were levied either on the sale and purchase of merchandise or livestock and were collected in a haphazard manner from time to time. Nearly 2100 years ago, there went out a decree from Ceaser Augustus that all the world should be taxed. In Greece, Germany and Roman Empires, taxes were also levied sometime on the basis of turnover and sometimes on occupations. For many centuries, revenue from taxes went to the Monarch. In Northern England, taxes were levied on land and on moveable property such as the Saladin title in 1178. Later on, these were supplemented by introduction of poll taxes, and indirect taxes known as "Ancient Customs" which were duties on wool, leather and hides. These levies and taxes in various forms and on various commodities and professions were imposed to meet the needs of the Governments to meet their military and civil expenditure and not only to ensure safety to the subjects but also to meet the common needs of the citizens like maintenance of roads, administration of justice and such other functions of the State.[2]<sup>2</sup>

In India, the system of direct taxation as it is known today, has been in force in one form or another even from ancient times. There are references both in Arthashastra and Manu Smriti to a variety of tax measures. Manu, the ancient sage and law-giver stated that the king could levy taxes, according to Sastras. The wise sage advised that taxes should be related to the income and expenditure of the subject. He, however, cautioned the king against excessive taxation and stated that both extremes should be avoided namely either complete absence of taxes or exorbitant taxation. According to him, the king should arrange the collection of taxes in such a manner that the subjects did not feel the pinch of paying taxes. He laid down that traders and artisans should pay 1/5th of their profits in silver and gold, while the agriculturists were to pay 1/6th, 1/8th and 1/10th of their produce depending upon their circumstances. The detailed analysis given by Manu .

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<sup>2</sup> <https://incometaxindia.gov.in/pages/about-us/history-of-direct-taxation.aspx>

on the subject clearly shows the existence of a well-planned taxation system, even in ancient times. Not only this, taxes were also levied on various classes of people like actors, dancers, singers and even dancing girls. Taxes were paid in the shape of gold-coins, cattle, grains, raw-materials and also by rendering personal service.

However, it is Kautilya's Arthashastra, which deals with the system of taxation in a real elaborate and planned manner. This well known treatise on state crafts written sometime in 300 B.C., when the Mauryan Empire was at its glorious upwards move, is truly amazing, for its deep study of the civilisation of that time and the suggestions given which should guide a king in running the State in a most efficient and fruitful manner. A major portion of Arthashastra is devoted by Kautilya to financial matters including financial administration. According to famous statesman, the Mauryan system, so far as it applied to agriculture, was a sort of state landlordism and the collection of land revenue formed an important source of revenue to the State. The State not only collected a part of the agricultural produce which was normally one sixth but also levied water rates, octroi duties, tolls and customs duties. Taxes were also collected on forest produce as well as from mining of metals etc. Salt tax was an important source of revenue and it was collected at the place of its extraction.

Kautilya described in detail, the trade and commerce carried on with foreign countries and the active interest of the Mauryan Empire to promote such trade. Goods were imported from China, Ceylon and other countries and levy known as a vartanam was collected on all foreign commodities imported in the country. There was another levy called Dvarodaya which was paid by the concerned businessman for the import of foreign goods. In addition, ferry fees of all kinds were levied to augment the tax collection. Collection of Income-tax was well organised and it constituted a major part of the revenue of the State. A big portion was collected in the form of income-tax from dancers, musicians, actors and dancing girls, etc. This taxation was not progressive but proportional to the fluctuating income. An excess Profits Tax was also collected. General Sales-tax was also levied on sales and the sale and the purchase of buildings was also subject to tax. Even gambling operations were centralised and tax was collected on these operations. A tax called yatravetana was levied on pilgrims. Though revenues were collected from all possible sources, the underlying philosophy was not to exploit or over-

tax people but to provide them as well as to the State and the King, immunity from external and internal danger. The revenues collected in this manner were spent on social services such as laying of roads, setting up of educational institutions, setting up of new villages and such other activities beneficial to the community.

Kautilya also laid down that during war or emergencies like famine or floods, etc. the taxation system should be made more stringent and the king could also raise war loans. The land revenue could be raised from 1/6th to 1/4th during the emergencies. The people engaged in commerce were to pay big donations to war efforts.

Taking an overall view, it can be said without fear of contradiction that Kautilya's Arthashastra was the first authoritative text on public finance, administration and the fiscal laws in this country. His concept of tax revenue and the on-tax revenue was a unique contribution in the field of tax administration. It was he, who gave the tax revenues its due importance in the running of the State and its far-reaching contribution to the prosperity and stability of the Empire. It is truly an unique treatise. It lays down in precise terms the art of state craft including economic and financial administration. [3]<sup>3</sup>

The modern India, Income tax was introduced for the time in the year 1860. Sir James Wilson was decided to impose it to meet the amount of losses sustained by the Government of India due to Sepoy Mutiny, in the year of 1857. After this, in the 1918 a new income-tax Act was passed. This Act was replaced by another new Act which was passed in the year 1922. This Act was continued in the force up to the year 1962. Based on the recommendation of professor Nicolas Kaldor, The wealth tax Act 1957, The Gift tax Act, 1958 and Expenditure Tax Act, 1957 were introduced. A report on new tax Act was submitted in the year 1958, by the law commission and based on these recommendations, Income-tax Act 1961 came into existence with effect from 1st of April, 1962. After that several amendments have been made every year through the union budget of the country. It has become a regular feature to present and finance Bill every year along with budget which include rates of the income-tax for the future year.

Income-tax Act 1961 provides for levy, administration, collection and recovery of

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<sup>3</sup> [http://14.139.60.114:8080/jspui/bitstream/123456789/968/3/Introductory%20\(1-7\).pdf](http://14.139.60.114:8080/jspui/bitstream/123456789/968/3/Introductory%20(1-7).pdf)

income-tax .Its provides progressive rate schedule, exemption limits and incorporates number of incentive provision. It provides sound tax system. Rate schedule and exemption limits are prescribed by finance Act.

Indian tax legislative and judicial environment is constantly evolving, along with globalization, economic shifts and operational adjustments. The tax laws of the country undergo significant changes every year on the passing of annual finance Act. Apart from the amendments coming out every year through the finance Act, There are circular/ notification issued by CBDT to implement of provision of the Act.

Paying taxes is an obligation that every Indian citizen is supposed to fulfill. And to help citizens follow through with their duty, the Government of India and the Income Tax Department have simplified the process of paying taxes and filing tax returns online. However, the process of tax collection dates. back to the times when scriptures

In today's time, the collection of taxes is based on the taxpayer's income and category, much like it was in ancient times. Since then, the Indian tax system has changed dynamically in various ways. Today, even filing income tax returns on life insurance in India can be carried out online on the Official Income Tax Department website.

Direct tax is the type of tax that is paid by the taxpayer on their income, earnings and profits. This tax is not levied on goods and services but on the taxpayer. The taxpayer can be an individual or an organization, and the tax is collected by the authority that imposes it, the Government of India and is a source of revenue for the government.

An important feature of direct taxes is that the responsibility of paying it cannot be passed on to another person or entity, as in the case of indirect taxes. The system of taxation is the backbone of a nation's economy which keeps revenue consistent, manages growth in the economy, and fuels its industrial activity. India's three-tier federal structure consists of Union Government, the State Governments, and the Local Bodies which are empowered with the responsibility of the different taxes and duties, which are applicable in the country. The local bodies would include local councils and the municipalities. The government of India is authorized to levy taxes on individuals and organisations according to the Constitution. However, Article 265 of the Indian constitution states that

the right to levy/charge taxes hasn't been given to any except the authority of law. The 7th schedule of the constitution has defined the subjects on which Union/State or both can levy taxes. As per the 73rd and 74th amendments of the constitution, limited financial powers have been given to the local governments which are enshrined in Part IX and IX-A of the constitution.

Income tax is levied on the taxable income of an assessee. Direct taxation is a tax that an assessee pays directly to the entity that imposes it. Direct taxes cannot be passed on by an assessee to a different person or entity. The assessee on whom the tax is levied is mainly responsible for paying it. Some of the major examples of direct tax include income tax and corporate tax. This research paper attempts to make an analytical review of Direct Taxation in India and accordingly three major research questions are raised. What is the quantum of direct tax collection? What is the contribution of direct tax collection towards the total tax revenue collection? And what is the cost of direct tax collection incurred by the government of India? This research is primarily based on secondary data and the duration for this research works is for a period of five years starting from the year 2013-14 to 2017-18. Analytical review has been made to understand the quantum of direct tax collection, the relationship between direct tax collection with the total tax revenue collection and the cost of direct tax collection in India.

Income tax is a direct tax. It is a very important source of government revenue. The government (Central, State or Local) needs money to spend on the social welfares of the public, to maintain law and order in the country, and to protect our country from foreign powers and enemies. Since our government is wedded to socialistic pattern of society, it is therefore the most important duty of a government to frame and implement such welfare & developmental Plans, policy and programs that ends the gap between the rich and the poor. All these activities require raising funds from various sources. These sources can be direct taxes or indirect taxes. Income tax being a direct tax, is an important tool for to achieve balanced socio-economic growth by providing concessions (rebate) and incentives in income tax for various developmental purposes.[4]<sup>4</sup>

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<sup>4</sup> [http://14.139.60.114:8080/jspui/bitstream/123456789/968/3/Introductory%20\(1-7\).pd](http://14.139.60.114:8080/jspui/bitstream/123456789/968/3/Introductory%20(1-7).pd)

### **Who is liable to pay income tax:**

Every person, whose taxable income for the previous financial year exceeds the minimum taxable limit is liable to pay tax during the current financial year on the income of previous financial year at the rates in force during the current financial year

For understanding Income tax law in India, the following components are defined about the Direct tax law.

- (1) Income-tax Act, 1961
- (2) Annual Finance Acts
- (3) Income-tax Rules, 1962
- (4) Notification and Circulars, issued from time to time
- (5) Judicial Decisions

Under the Constitution of India Central Government is empowered to levy tax on the income. Accordingly, the Central Government has enacted the Income Tax Act, 1961. The Act provides for the scope and machinery for levy of Income Tax in India. The Act is supported by Income Tax Rules, 1961 and several other subordinate and regulations. Besides, circulars and notifications are issued by the Central Board of Direct Taxes (CBDT) and sometimes by the Ministry of Finance, Government of India dealing with various aspects of the levy of Income tax. Unless otherwise stated, references to the sections will be the reference to the sections of the Income Tax Act, 1961. Income tax is a tax on the total income of a person called the assessee of the previous year relevant to the assessment year at the rates prescribed in the relevant Finance Act. Some of the important definitions under Income Tax Act, 1961

The Income Tax Act, enacted in 1961, is a statute that focuses on the different rules and regulations that govern taxation in the country. It provides for collecting, levying, administering and recovering income tax for the Indian government.

The Income Tax Act, 1961 contains a total of 23 chapters and 298 sections. These deal with various aspects of taxation in India. The various heads for which one has to pay income tax include, Rather than assuming that income tax is a burden, citizens should contribute to the progress of a nation by paying income tax. The general population

should endeavor to comprehend the significance of income tax and the perceived role their money plays in the country's growth. As a responsible citizen, one must always pay their income tax on time because it is only via tax payments that our country can stay up with other industrialized nations and progress further. If people begin to perceive income tax as a hardship and avoid having to pay it, our nation's growth will suffer, as would social disintegration so in order to avoid the same paying of income tax on time is consequential.

All the elements included in the Finance Act associated with a particular Financial Year are of course important. Even so, there are particular elements that take precedence over the others.

The most important element is the rules laid down in the Act with respect to Income Tax Rates. Every year, the Act lays down in detail all the associated provisions related to Income Tax in the country. Since this applies to a large number of taxpayers, it is considered one of the most important elements.

The Finance Act is responsible for laying down the tax slabs that applies to taxpayers. The Act includes various details related to:

- Income through Salary
- Agricultural Income
- Tax slabs for Senior Citizens
- Tax slabs for Very Senior Citizens
- Income Tax Surcharges
- Taxes chargeable to companies
- Advance tax

No tax may be imposed or collected in India without the authority of the law, according to Article 265 of the Constitution. As a result, each tax imposed or collected must be supported by a corresponding law, approved by the State Legislature or the Parliament.

## **1.1- OBJECTIVE:**

The main aim and objects of the dissertation are given bellow.

1. To understand the income-tax rules and regulation.
2. To know about the income-tax Act 1961.
3. To find out that the taxpayers can compute and file the Income Tax Return (ITR) without the help of tax consultant.
4. To find out the help of New Direct Tax Code (DTC) for Moderate Relief.
5. To know that the New Direct Tax Code (DTC) will reduce Unnecessary Exemptions.
6. To know EET ( Exempt Exempt Tax Model) Model will collect more tax in future.



## **1.2-HYPOTHESIS:**

It is hypothesis of this dissertation that if government provide facilities and make a such program to aware public about the tax law and make a simple process of tax collection, definitely number of tax payer will increase and income of the government will increase which will be helpful to lift up country.

This hypothesis is relational hypothesis. It is related between government and income of public.

According to the tax-smoothing hypothesis, the government sets the budget surplus equal to expected changes in government expenditure. When expenditure is expected to increase, the government runs a budget surplus, and when expenditure is expected to fall, the government runs a budget deficit.

This economic principle states that those who have more resources or earn a higher income should bear a greater tax burden. Some critics see that as a disincentive for individuals to work hard and earn more money because the more a person makes, the more taxes they pay.

If we have to proceed towards some destination for which we don't know the way and we try to form an idea about the direction to proceed and by trial and error and we reach the destination this idea is called hypothesis.

**Source of Hypothesis:-** Hypothesis will originate when some problem must exist because person should start looking for fact concerned with this problem, these fact are then organized.

- 1- A hypothesis should be specially testable.
- 2- Hypothesis should be closest to thing observable.
- 3- Hypothesis must be conceptually clear.
- 4- Hypothesis must be specific.
- 5- The hypothesis should be related to a body of theory or some theoretical oriented.
- 6- Hypothesis should be related to available techniques.

### **Importance of hypothesis;-**

- 1- It provide the direction of research.
- 2- It is a guide to the thinking process and the process of discovery
- 3-It prevent blind research and indiscriminate gathering of data which may later turnout to be Irrelevant.
- 4-It enables the investigator to understand his problem with more clarity and its ramifications.
- 5-It serve a framework for drawing conclusion.

### **1.3-RESEARCH PROBLEM:**

The direct tax law and its effect on people of India can be identified on the basis of observation or experience. Tax payers are facing a problem to filling a income tax return form. Income tax rule are very lengthy and complicated. Income tax structure are complicated , every tax payer not able to understanding.

It is not easy to define a problem because this research problem has different social and legal aspects .Every year finance rules are changing as per requirement of the government. Government changing the rules of direct tax law and including new rules in every year. It can be inferred that Indian tax structure needs a lot of changes to suit Indian conditions. Every individual is interested to save his income tax. This possible if person takes full advantage of the various provisions contained in the income tax Act specially relating to deduction and exemption.[5]<sup>5</sup>

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<sup>5</sup> Book-LEGAL RESEARCH METHODOLOGY 3<sup>RD</sup> EDITION

BY PROF. (Dr.)RATTAN SINGH, PUBLICATION OF LEXIS NEXIS

The income tax Act 1961 has become very complicated and virtually unintelligible to understand by common man by virtue of a difficult structure, numerous amendments frequent policy changes and a multitude of judgments that gave varying interpretations to already undecipherable provisions.

This complexity has not only increased the cost of compliance for the average tax payer , but also made its costly for the government to collect the tax . The above written problems related to direct tax law should be rectified because the role of tax revenue is very important for the development of country.

Tax is a compulsory contribution to state revenue, levied by the government on various types of person's income and business profits, or added to the cost of some goods, services and transactions. Taxes are generally enforced by a government entity, whether local, regional or national in order to finance government activities. Tax aid helps in services and transactions. Taxes are generally enforced by a government entity, whether local, regional or national in order to finance government activities. Tax aid helps in building the economic growth & development of a country. Taxation policy is a core of economic policies, ensuring that countries are able to maintain and improve its global competitiveness and to expand. Tax Revenue forms part of the Receipt Budget, which in turn is a part of the Annual Financial Statement of the Union Budget.

## **1.4- RESEARCH QUESTIONNAIRE:**

Research questions start with research problem. It is set of question that the we needs to answer related to research problem. t is a statement which identifies the problem that research will go to address. Good research questions seek to improve knowledge on the research topic. To form a research question, we must know what type of study we are conducting like quantitative or qualitative, according we needs to form research questions.

We have met some persons to know about their knowledge in the Direct tax Law to prepare the my dissertation, maximum persons were tax payer, what were asked are given bellow with answer.

- 1-** Are you know about the submission of income tax amount in the account of income tax.

Answer: - Maximum persons who are tax payer were not aware, how to deposit income tax amount in the account of the income tax.

- 2-** Are you know about income tax calculation of your earned income of the current year.

Answer:-Many tax payer persons did not know about calculation of income tax.

- 3-** Whether you fill up ITR (income tax return) by yourself, or use to take help others.

Answer:- Maximum persons means tax payer not filling the ITR by them self.

- 4-** Many persons are not paying income tax because the process of income tax return is very lengthy and complicated.

- 5-** Persons are not know about the income tax slab and rate of income tax.

- 6-** Very few persons know income tax rebate on the taxable income.

- 7-** Peoples are not aware about the Direct tax or indirect tax law.

- 8-** Even tax payers are unable to understand articles of the Income tax Act.

- 9-** Persons don't have knowledge about the finance bill.

- 10-** Many persons are not know, remedy from extra deducted income tax amount of money from the income

11- Many persons want to be a part of income tax payer and contribute money in the progress of country, But they are fear on the complex and lengthy process of income tax processor.

Because of time constraint was with me so I could not given sufficient time to collect the maximum required data from person by questionnaire. A questionnaire is a research instrument the comprises of a bunch of questions that are framed by researcher to collect relevant data from the responded. A questionnaire may or may not be delivered in the form of survey, but a survey always consist of a questionnaire.

## 1.5- **RESEARCH METHODOLOGY:**

In this dissertation doctrine research method has been used. The dissertation is mainly based on secondary data such as books, Act .Report of Government of India .Proposed study is an exploratory research based on historically secondary data on the theme and review of related literature. The Used of data which is direct and indirect taxes of union Government of India, various magazines, and news paper published articles itc. And electronic media like web-site e-newsletters As I think Dissertation work will be based on analysis of secondary data collected through officially sources.

Doctrinal research is described as a research method that is often considered as normal judicial research. The term doctrine comes from Latin and means to instruct, read, or understand. Doctrinal research is a study of constitutional principles, It inquires about what the rule is on a specific subject. It's all about examining legal theory and how it's been formed and implemented.

The topics covered in this type of study are limited. The essence of law; ideas behind is specific whether substantive fields of law, such as civil law, criminal law, torts, or contract, political or the purpose of rights, obligation, responsibility, and justice, to name

a few. The analyst also employs theories of judicial interpretation exploring legal principles in doctrinal work. Pure research is another name for this type of study.

A doctrinal analytical approach will concentrate on case law, legislation, and other legal documents. The process does not seek to study the influence of the Statute or its use. Instead, it focuses on the law as a written entity that can be distinguished and interpreted by legal sources based on the doctrinal approach.

It is about discovering the rules, evaluating them, and producing rational arguments behind them. It also adds to the stability, coherence, and accuracy of legislation as the essential information found is in the legislative sources, both primary and secondary sources.

The most popular approach used by law researchers for doctrinal research is library-based analysis. As is well known, this is theoretical research that consists of either basic research aimed at locating a particular legal argument or legal study with more nuanced reasoning and depth. It is a library-based study to identify the "only correct answer" to specific legal issues or questions.

The keys to doctrinal or library-based analysis are primary responses to particular questions which can be sought and checked. These steps include examining legal issues to decide if more study is needed. This stage usually entails a lot of background reading on a topic, including dictionaries, encyclopedias, fundamental textbooks, treatises, and journals with footnotes. These tools include descriptions of terms that assist the researcher in comprehending and outlining the legal concepts at work in the area of law under consideration.

One of the main purposes of conducting doctrinal research is solving the legal problems of bringing laws. For example, if the government decides to bring umbrella legislation for all the crimes committed against women, it may initiate doctrinal research by some jurists and experts in the field.

They may have to go through all the existing laws in this field, previous case laws, precedents, international trends, legal commentaries, articles by scholars, dictionaries,

encyclopedias, journals, treatises, textbooks and other sources of legal information. Going through this sea of information, they would be able to answer all the questions related to this legislation and will be successful in bringing out comprehensive legislation.

It can be utilized for several other purposes as well like to help lawmakers develop meaningful and effective laws, develop fresh legal doctrines, aid courts in reaching effective and legally accurate judgments, help lawyers to interpret statutes and prepare their suits, help students in academia to set a base and many others.

### **PURPOSE OF DOCTRINAL RESEARCH:**

The following points answer the question – why doctrinal research is essential in law. The principal objectives of the legal doctrinal study include but are not limited to:

To build, assess and apply knowledge to contemporary legal issues by generating new ideas, concepts, and doctrines; Ensure continuity, accuracy, and legal clarity

To provide prosecutors, judges, and those with the appropriate resources to take action on a vast spectrum of topics, often with little time.

The primary goal of the doctrinal legal analysis is to reinforce the significant part of the law that may accomplish the larger legal objective.

There are apparent differences in the level of complexity of the doctrinal legal study. In the first instance, the method of doctrinal research often used by students and professionals is unsuitable.

This method is based on the resolution of a single legal issue and includes the following measures in general:

Compiling relevant facts

Identifying legal problems

Reviewing of problems to look for laws

Going through articles/books Journal of publications in legal dictionaries, reference books, magazines, reform of the law and policy documents;

Locating primary material, including legislation delegated legislation, and case law

Summary of all the problems in the context

To reach a temporary conclusion.

### **FEATURES OF DOCTRINAL RESEARCH:**

The research is focused primarily on legal proposals.

Appellate Courts and traditional legal theories are the basis of data for a doctrinal author.

### **ADVANTAGES OF DOCTRINAL RESEARCH:**

In the initial stage of legal education, it is agreed that legal research methods should be used as it helps academicians with their primary studies.

The doctrinal research takes less time.

Doctrinal legal analysis is a result of a perception of the legal truth of a scholar. These two perceptions, though, are both compelling and logical.

Doctrinal research provides the instruments required in the legal judgment for attorneys, judges, and others.

This study attempts to find substantive law loopholes, anomalies, ambiguities, and contradictions. Such analysis provides quick responses on legal issues.

To begin with the advantages, doctrinal research forms the base of legal research in the academic field of law. Law students at the graduate and post-graduate levels usually venture into the world of legal research with the help of doctrinal methodology. This is the starting point for them where they can analyze sources available in the library and logically deduce their findings. The students are not well equipped at this particular stage to get involved with empirical research and to consider the law in the context of society. It is easier for them to study law “as it is” from secondary sources and it acts as a good starting point.



In addition, it gives the judges and lawyers the flexibility to approach law from different aspects and make its interpretation. It may not be wrong to say that the amorphous mass of the present-day statutory provisions takes concrete shape and form in the great laboratories of the law courts. (Jain 1982) Judges have over time developed law from their deep knowledge and investigation into the field. Law of torts is one great example as it is a “judge-made law”. Therefore, doctrinal research being the traditional methodology has helped in the development of legal research by giving it a base. It has been a close companion of law academicians, students, judges, advocates and jurists

### **DISADVANTAGES OF DOCTRINAL RESEARCH:**

Often it is found that the fundamental social action varies from the activities requested by the legal standard. The doctrinal legal research is thus arbitrary in nature.

It is also known as a "trivial doctrinal examination" cause sometimes it is done without proper understanding of the legal system's social, financial, and political significance.

The doctrinal approach is often criticized for being detached from reality; by focusing on legal documents, it often fails to query or challenge the law's implementation, instead of analyzing it only on the basis of internal continuity.

Nonetheless, the doctrinal analysis should underpin most legal study, as a robust doctrinal analysis to determine what the policy is often a prerequisite to researching, particularly in places where the laws are unclear or changing.

However, doctrinal research has its own shortcomings as well. Availability and choice of right and reliable sources is the bottleneck in doctrinal research. Logical deduction is also an uphill task. Furthermore, it is highly theoretical and restricted. Without the right direction, it may become highly objective and too mechanical. Moreover, it can be further highlighted that it studies law individually and does not consider it in the backdrop of society which is the playground of law. Without studying its normative and practical aspects, it's like studying law in darkness and seems incomplete. [6]<sup>6</sup>

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<sup>6</sup> Book-LEGAL RESEARCH METHODOLOGY 3<sup>RD</sup> EDITION

BY PROF. (Dr.)RATTAN SINGH, PUBLICATION OF LEXIS NEXIS

**CHAPTER 2-OVERVIEW OF DIRECT TAX LAW---(20-96)**

**2.1-LAW OF TAXATION AND CONSTITUTION OF INDIA**

**2.2- INCOME TAX ACT 1961**

**2.3-FINANCE ACT**

**2.4-CENTRAL BOARD OF DIRECT TAX**

## **2-OVERVIEW OF DIRECT TAX:**

After Independence in 1947, India has formed into open Market Economy. In Early 1990's started the Process of progression and diminished controls on outside exchange and venture. It has served to quicken the nation's development rate with a gauge to ascend to 7.5% in money related year 2015/16. In the wake of monetary reforms, the tax system in India has under gone an extreme change, in accordance with the liberal policy. A portion of the progressions incorporate:- legitimization of tax structure; dynamic decrease in pinnacle rates of customs obligation ; decrease in corporate tax rate; customs duties to be lined up with ASEAN levels; presentation of value added tax; extending of the tax base; tax laws have been rearranged to guarantee better consistence. Tax policy in India gives tax occasions as concessions for different sorts of ventures. These incorporate incentives to need areas and to enterprises situated in unique zone/locales. Tax incentives are accessible likewise for those occupied with improvement of infrastructure.

India has a well-created tax structure. The ability to levy taxes and duties is appropriated among the three tiers of Government, as per the arrangements of the Indian Constitution. The principle taxes/duties that the Union Government is enabled to levy are: - Income Tax (aside from tax on agricultural salary, which the State Governments can levy), Customs duties, Central Excise and Sales Tax and Service Tax. The essential taxes required by the State Governments are: - Sales (tax on intra-State clearance of goods), Stamp Duty (obligation on exchange of property), State Excise (obligation on production of alcohol), Land Revenue (levy on land utilized for agricultural/non-agricultural purposes), Duty on Entertainment and Tax on Professions and Callings. The Local Bodies are enabled to levy tax on properties (structures, and so on.), Octroi (tax on section of goods for use/utilization inside zones of the Local Bodies), Tax on Markets and Tax/User Charges for utilities like water supply, drainage, and so forth.[7] <sup>7</sup>

Taxation is an indispensable instrument in the fiscal arsenal of the government. By taxing the wealthy classes of society as indicated by their ability, the government gathers the

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<sup>7</sup> <https://www.taxmann.com/governments>.

revenue and then spends on administrations which are valuable to the network all in all. Taxing individuals, is certifiably not another marvel created by the cutting edge

It is fascinating to see that even crude and old social orders could flaunt taxation so as to release their public commitments and address the issues of security. The benefit of a dealer or the animals of an agriculturist were exposed to a type of taxation in the old days. Amid the Vedic occasions, the rule of taxation or the strategy for gathering consumption by falling back on taxation was a perceived need and a significant government work in whatever structure it may have been upheld. The essential goal of requiring taxes is to raise revenue by exchanging resources from the public to the government. Nonetheless, this goal might be adequate just on account of created nations. The point of the tax policy in a creating nation ought to likewise be to evacuate the disparities of incomes in the general public. This rule of equity accept more significance in India, where the desire for equity of income is extraordinary. The tax policy ought to confer incorporated in adaptability with the tax structure and furnish proceeding with most extreme revenue profitability reliable with the ideal growth rate. The inherent adaptability woven into the tax structure gets the extra revenue to the state as income ascends without as often as possible going for administrative authorization and in the meantime accommodates an enemy of inflationary component. The inherent adaptability of a specific tax relies upon the width of the tax base with respect to national income, the responsiveness of the tax base to change in national income, and the rate structure of the tax. So the tax policy should go for most extreme conceivable inherent adaptability in the tax structure, particularly in creating nations where the requirement for the additional resources is pressing.

The tax structure of creating nations ought to be designed to the point that it isn't just instrumental in activating reserve funds yet additionally it doesn't unfavorably influence the prompting to contribute. Additionally, tax policy, other than going for economic growth, should assume a positive job in realizing economic soundness, allocative productivity, and ideal income appropriation in immature nations. It ought to be recollected that in spite of the fact that the essential point of tax policy is to raise revenue with rising income and to expand public reserve funds for gainful capital arrangement, it

should endeavor to accomplish some ideal economic and social goals. The n current theory and system of taxation in India are to a great extent dependent on the British practice. Nonetheless, after the freedom, there was an extreme change in the government frame of mind towards the tax structure and policy. Under the British standard, the point of tax policy was just to raise assets for running the government, presently the goal isn't just to gather revenue yet in addition such accumulation is to fit in with certain financial policies went for accomplishing most extreme social great.

Tax system ought not to contain a predisposition for a specific group of taxpayers. It is not necessarily the case that dynamic rate of taxation is inapplicable. The second thought is that the tax system must have appropriate economic impacts and ought not debilitate the motivator to work, spare, and go out on a limb. The third prerequisite is that the tax system must be far reaching and basic and must make for effectiveness of the organization and anticipate expansive scale tax evasion.

Taxes are termed as an obligatory contribution made by individuals or corporations falling under the tax slab, to the Government of India. From local to national, taxes are applicable on all levels in India and are considered to be one of the major sources of income for the Government.

The government levies taxes on the citizens of the country to produce income for business projects, enhance the country's economy, and lift the standard of living of the nationals. The government's authority to levy tax in our country is drawn from the Constitution of India that deals out the supremacy to levy taxes to the State as well as Central governments. All the taxes levied within the country require being backed by an escorting law passed by the State Legislature or the Parliament.

In a broader term, there are two types of taxes namely, direct taxes and indirect taxes. The implementation of both taxes differs. We pay some of them directly, like the cringed income tax corporate tax, wealth tax, etc., while you pay some of the taxes indirectly, like sales tax, service tax, value added tax, etc

Direct tax regime provides a sense of certainty to both the taxpayer and government. The amount of tax that must be paid and the amount of tax that must be collected is easy to calculate and known in advance by both the government and the taxpayer.

Direct tax is a type of tax in which the payment burden falls directly on the payer, and the liability cannot be shifted to others.[8]<sup>8</sup>

The direct tax includes income tax, gift tax, capital gain tax, etc while indirect tax includes value-added tax, service tax, goods and services tax, customs duty, etc. The Central Government of India imposes taxes such as customs duty, central excise duty, income tax, and service tax.

Effects of Direct Taxes on Distribution: Direct taxes take the form of taxation on the income and property. It attempts to reduce the income of the richer sections and transfers the income to the Government. The Government may use these resources to raise the standard of living of the poor.

Direct taxes are levied on individuals and companies by the country's supreme tax body. Direct taxes are directly paid by those on whom it is imposed. For instance, taxpayers directly pay income tax, property tax, tax on assets and gifts to the government.

The Central Board of Direct Taxes is a statutory authority functioning under the Central Board of Revenue Act, 1963. The officials of the Board in their ex-officio capacity also function as a Division of the Ministry dealing with matters relating to levy and collection of direct taxes. Historical Background of C.B.D.T.

As stated earlier, We pay these taxes directly. The government levies such taxes directly on an individual or an entity and it cannot get transferred to any other person or entity. There is only one such federation that winks at the direct taxes, i.e. the Central Board of Direct Taxes (CBDT) governed by the Department of Revenue. The CBDT has, to assist it with its sense of duties; the backup of several acts that preside over several aspects of the direct taxes.

Indian economy has developed in most magnificent manner. GDP acts as an indicator of economic growth of country. Gross Domestic Product represents the rise or fall in per capita income. Across the world GDP is calculated in different methods. There are three methods which are most commonly used to measure GDP. In the first method, expenditure approach, (GDP) is calculated on the basis of the expenditure. The total of expenditure spent by three major category of users i.e., customers, investors and

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<sup>8</sup> <https://www.taxmann.com>

Government is ascertained to know the value of GDP.  $GDP = \text{Consumption} + \text{Government Spending} + \text{Investment} + \text{Net Exports (Exports-Imports)}$ . In the second method, GDP is defined on the basis of Income approach- is the country's total expenditure spent by the country should equal to the income generated by the country. Further, revenues of country must be excess than the expenditure of the country. Third approach says GDP is the monetary value of all goods and services produced in a specific period of time by a particular country. In the income approach, the revenues of the country are measured to compute GDP. Taxes are the vital source of revenue to any government. They are known as compulsory charge or payment to meet the public expediency. Indian taxation system follows two different types . They are Direct taxes and Indirect Taxes. Direct taxes are personal or individual Income tax and Corporate Tax. Indirect taxes are sales tax, VAT, Customs, Excise and service tax. Present day all these taxes are brought under one ambit of Goods and Service tax. While designing the taxation structure, it has to be kept in mind that it should be in compliance to meet socio-economic objectives of the state. Direct taxes are progressive in nature as they increase to the proportion of the income of individual and corporate. Indirect taxes are regressive in nature, dependent on economic activities of every person.

**Invest in products applicable under section 80C:**

1. PPF (Public Provident Fund)
2. Tax Saving FDs.
3. ELSS (Equity Linked Savings Scheme)
4. NSC (National Saving Certificate)
5. Life Insurance Premium.
6. NPS (National Pension Scheme)
7. Home Loan Repayment.
8. Payment of tuition fees.

## **A-Direct Tax History:**

The first Income-tax Act was introduced in February 1860 by Sir James Wilson (British India's first finance minister). The act received the assent of the governor-general on 24 July 1860, and came into effect immediately.

The first tax structure was laid out by the Income Tax Department in 1922 that outlined specific terminologies for Income Tax authorities. Since 1922, the changes and amendments in the Indian Tax System have been quite rapid. The second World War, during which the business communities made excellent profits, also saw the introduction of the Excess Profits Tax and Business Profits Tax between 1940-1947, which were then repealed in 1946. The administration of this tax that was handed over to the Income Tax Department was also repealed in 1949. But most importantly, there were numerous policy and administrative tax reforms were carried out. For instance, under policy reforms, tax rates were lowered, tax laws, especially the ones concerning capital gains, were simplified, measures for presumptive taxation were brought in, and the tax base was widened.

Under administrative reforms, the tax collection system was computerized, which involved allotting unique identification numbers to taxpayers, and human resources were realigned to meet the business needs of the department.

A direct tax is a tax that a person or organization pays directly to the entity that imposed it. Examples include income tax, real property tax, personal property tax, and taxes on assets, all of which are paid by an individual taxpayer directly to the government.

A direct tax is paid by an individual or organization to the entity that levied the tax.

Direct taxes include income taxes, property taxes, and taxes on assets.

There are also indirect taxes, such as sales taxes, wherein a tax is levied on the seller but paid by the buyer.

Direct taxes in the United States are largely based on the ability-to-pay principle. This economic principle states that those who have more resources or earn a higher income



should bear a greater tax burden. Some critics see that as a disincentive for individuals to work hard and earn more money because the more a person makes, the more taxes they pay.

Direct taxes cannot be passed on to a different person or entity. The individual or organization upon which the tax is levied is responsible for paying it. A direct tax is the opposite of an indirect tax, wherein the tax is levied on one entity, such as a seller, and paid by another—such as a sales tax paid by the buyer in a retail setting. Both kinds of taxes are important revenue sources for governments.

Examples of indirect taxes include excise duties on fuel, liquor, and cigarettes as well as a value-added tax (VAT), also referred to as a consumption tax.

#### The History of Direct Taxes

The modern distinction between direct taxes and indirect taxes came about with the ratification of the 16th Amendment to the U.S. Constitution in 1913. Before the 16th Amendment, tax law in the United States was written so that direct taxes had to be directly apportioned to a state's population.<sup>23</sup> A state with a population that was 75% of the size of another state's, for example, would only be required to pay direct taxes equal to 75% of the larger state's tax bill.

This antiquated verbiage created a situation in which the federal government could not impose many direct taxes, such as a personal income tax, due to apportionment requirements. However, the advent of the 16th Amendment changed the tax code and allowed for the levying of numerous direct and indirect. Although the actual definitions vary between jurisdictions, in general, a direct tax or income tax is a tax imposed upon a person or property as distinct from a tax imposed upon a transaction, which is described as an indirect tax. There is a distinction between direct and indirect tax depending on whether the tax payer is the actual taxpayer or if the amount of tax is supported by a third party, usually a client. The term may be used in economic and political analyses, but does not itself have any legal implications. However, in the United States, the term has special constitutional significance because of a provision in the U.S. Constitution that any direct taxes imposed by the national government be apportioned among the states on the basis of population. In the European Union direct taxation remains the sole responsibility of member states.

### **Examples of direct taxes:**

Direct taxation can apply on income or on wealth (property tax; estate tax or wealth tax). Here below a few examples of direct taxes existing in the United States.

**Income tax**- it is the most important direct tax in many developed countries. It is based on incomes of taxpayers. A certain amount of money is taken from the wage of the individuals. When this type of tax is applied to corporations and firms, it is called corporate income tax.

**Transfer taxes**- the most frequent form of transfer taxes is the estate tax. Such a tax is levied on the taxable portion of the property of a deceased individual. A gift tax is also another form of transfer taxes when a certain amount is collected from people who are transferring properties to another individual.

**Entitlement tax or payroll taxes**: this type of direct tax serves to finance social security and health services. The entitlement tax is collected through payroll deductions. Their importance increases with the rise of the development of the welfare state during the twentieth century.

**Property tax**- property tax is charged on properties such as land and buildings.

**Capital gains tax**- this tax is collected when an individual earns gains from the sale of capital, for example when an individual sells stocks, real estate, or a business. The tax is computed by determining the difference between the acquisition amount and the selling amount. Direct tax is a form of collecting taxes applicable on the general public by the means of their personal income and wealth generated and collected through formal channels and worthy government credentials such as Permanent account number and bank account details.[9]<sup>9</sup>

### **Types of Taxes in India :**

The two types of taxes in India are Direct and Indirect taxes. One of the biggest and most successful tax reforms in India is the GST(Goods and Services Tax). It assists as a comprehensive indirect tax which helps in eliminating the flowing effect of tax as a whole.

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<sup>9</sup> <https://neerajbhagat.com/blog/index.php/tax-law-of-india-direct-and-indirect-tax-laws/>

## **1-Direct tax;**

It is a tax imposed on corporate units and individual people. It is a type of tax that can't be moved or accepted by anyone else. Direct tax examples are wealth tax, income tax, gift tax, etc. In the Ministry of Finance, the Central Board of Direct Tax (CBDT) is a part of the revenue department. This board has a two-fold role that gives important ideas, significant inputs of planning, and policies to be implemented regarding direct tax in India. The management of direct taxes which is done by the Income Tax department is helped by the Central Board of Direct Taxes in doing so.

Direct tax It is paid by the person on whom it is legally imposed, the impact of money burden and incidence are on the same person , direct tax cannot be shifted to another person. For eg; Income tax, wealth tax, house tax, salaries, capital gains

## **2-Indirect tax:**

Indirect taxes it is imposed on one person , but paid partly or wholly by another person. The impact and the incidence of tax are on different person, indirect taxes can be shifted or passed on to another person eg GST , excise duty

Taxes that are indirectly imposed on the public through goods and services are called indirect taxes. The government bodies collect taxes from people who sell goods and services. When a good or product is sold in a state, then a sales tax is levied on it and its rate is decided by the government, this is called Value Added Tax (VAT).

Formulation of the policy regarding duty, collection of custom excise duty and service tax is dealt with by the Central Board of Excise and Custom (CBEC) The Central Board of Excise and Custom was given a new name which was the Central Board of Indirect tax and Custom (CBIC) after GST came into force. Its key role is to help the government in formulating policies related to GST.

## **B-Types of Direct Tax:**

Under the Indian Income Tax Act, 1961 defined of the all type of direct tax as well as indirect taxes. A direct tax is a tax which is paid directly by a taxpayer to the tax-imposing authority. It is also defined as the tax where the liability as well as the burden to pay it resides on the same individual taxpayer. Direct taxes are collected by the central government as well as state governments according to the type of tax levied. Major types of direct tax include:

- 1-Taxes on income
- 2-Corporation tax
- 3-Interest Tax
- 4-Estate duty
- 5-Gift Tax
- 6-Wealth Tax
- 7-Agricultural tax
- 8-Land Revenue
- 9-Expenditure tax
- 10-Hotel receipts tax
- 11-Duty Tax
- 12- Capital Gain Tax

### **1-Income Tax: Levied on and paid by the same person.**

It's defined under The Income-tax Act, 1961 (43 of 1961.)

Income tax is a type of tax governments impose on income generated by businesses and individuals within their jurisdiction. Income tax is used to fund public services, pay government obligations, and provide goods for citizens.

**B-Corporate Tax:** Paid by companies and corporations on their profits.

Section 2(17) of the Income Tax Act, 1961, defines a corporate as a company incorporated in India or outside India (under the laws of that foreign country). The

definition also includes institutions, associations and bodies of individuals which have been assessed as a corporation for any assessment years after 1922.

The Income Tax Act, 1961 levies a corporate tax on domestic as well as foreign companies. The Government of India, through this Act, mandates domestic companies to pay corporate taxes based on their universal income. On the other hand, foreign companies are only taxed on their income accrued or received in India.

The Indian government levies corporate taxes on enterprises as a source of income. The calculation of this tax is premised upon the net income of a company. These are the types of income that a company earns -

Corporation Tax popularly known as Corporate Tax is a direct tax levied on the net income or profit that corporate enterprises make from their businesses. The tax is imposed at a specific rate as per the provisions of the Income Tax Act, 1961.

### **2-Wealth Tax: Levied on the value of property that a person holds.**

About wealth tax described in The Wealth-tax Act, 1957 (27 of 1957.)

India's tax system involves many different types of taxes and one of them is wealth tax (a.k.a. net worth tax, capital tax or equity tax). The government abolished wealth tax as announced in the budget 2015. In its stead, the government decided to increase the surcharge levied on the 'super rich' class by 2% to 12%. Super rich are persons with incomes of Rs.1 crore or higher and companies that earn Rs.10 crores or higher. The abolition was a move to do away with high costs of collection and also to simplify the existing tax structure thereby discouraging tax evasion.

Wealth tax is a direct tax with the aim to reduce the inequalities of wealth. It is charged on the net wealth of super rich individuals, companies, and Hindu Undivided Families (HUFs). It was abolished and replaced with 2% additional surcharge levy.

Introduced in late 1950s, Wealth tax is a levy of tax on the net wealth (the aggregate value of assets minus the aggregate value of debts or liabilities as on the valuation date) of super rich individuals/HUF/companies at the end of a fiscal year. Wealth tax was essentially aimed at taxing the super-rich taxpayers who both by inheritance or on their own, accumulated wealth and therefore, had to make a larger contribution to the exchequer. An individual, a Hindu Undivided Family or a company had to pay a wealth tax of 1% on earnings of over Rs.30 lakh p.a.

Wealth tax is levied on the net wealth owned by a person on the valuation date, i.e., 31st March of every year. Wealth-tax is levied at 1% on the net wealth in excess of Rs. 30,00,000. Entities which are not liable to wealth-tax. The Chelliah Committee had recommended abolition of Wealth Tax in respect of all items of wealth other than those which can be regarded as unproductive forms of wealth or other items whose possession could legitimately be discouraged in Social Interest.[10]<sup>10</sup>

### **3-Duty Tax:**

Duty taxes are comes under The Estate Duty Act, 1953 (34 of 1953.)

The term "duty" refers to a form of taxation levied on certain goods, services, or other transactions. People and corporations may be required to pay levies on imports and exports by governments in the form of customs duties and other taxes. This is done in order to collect revenue and to satisfy other economic reasons. Duties are enforceable by law and may be imposed on commodities or financial transactions instead of individuals.

A duty is a form of taxation levied on certain goods, services, or other transactions that are imported and exported.

Duty rates are a percentage determined by the total value of the goods paid for in another country.

Duties provide a form of commerce protection for jobs, the economy, the environment, and other interests by controlling the influx and outflow of merchandise.

A duty may also be someone's moral or fiduciary responsibility.

In economics, a duty is a target-specific form of tax levied by a state or other political entity. It is often associated with customs, in which context they are also known as tariffs or dues. The term is often used to describe a tax on certain items purchased abroad.

The duty is levied at the time of import and is paid by the importer of the goods. The main purpose of import duty is to protect Indian industries from cheaper foreign goods. Goods & Services Tax (GST) is levied on all imported goods, with the tax rate being 10% of the value of the goods

In economics, a duty is a target-specific form of tax levied by a state or other political entity. It is often associated with customs, in which context they are also known

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<sup>10</sup> <https://www.economicstimes.com>

as tariffs or dues. The term is often used to describe a tax on certain items purchased abroad.

A duty is levied on specific commodities, financial transactions, estates, etc. rather than being a direct imposition on individuals or corporations such income or property taxes. Examples include customs duty, excise duty, stamp duty, estate duty, and gift duty.

#### **4 -Gift Tax:**

An individual receiving the taxable gift pays tax to the government. Gift tax which are defined under The Gift-tax Act, 1958 (18 of 1958.).

**Taxable Value of the Gift.** Cash, Cheque or Bank Transfer. If the value of the gift exceeds Rs50,000. The entire sum of money received as a gift. Immovable property such as land, building, etc., without consideration (i.e., without making any payment) In economics, a gift tax is the tax on money or property that one living person or corporate entity gives to another. A gift tax is a type of transfer tax that is imposed when someone gives something of value to someone else. The transfer must be gratuitous or the receiving party must pay a lesser amount than the item's full value to be considered a gift.[citation needed] Items received upon the death of another are considered separately under the inheritance tax. Many gifts are not subject to taxation because of exemptions given in tax laws. The gift tax amount varies by jurisdiction, and international comparison of rates is complex and fluid.

The process of transferring assets and wealth to the upcoming generations is known as estate planning. It involves planning for transfers at death or during life. One such instrument is the right to transfer assets to another person known as gift-giving, or with the goal of reducing one's taxable wealth when the donor still lives. For fulfilling the criteria of a gift, the person who receives the gift cannot pay the giver the full value for that gift, but they may pay an amount less than the full value of the gift. In the situation where all exclusions, thresholds, and exemptions have been met, these kinds of transfers are subject to a gift tax.

There are some criteria for a valid gift to be satisfied: the intention of the donor should be to voluntarily transfer and he is also competent to do so. On the receiver side, the donee should be able to receive and take delivery, and the person who provides the gift would be ready to give up all the control over the given property

## **5- Capital Gain Tax:**

Section 45 of Income Tax Act, 1961 provides that any profits or gains arising from the transfer of a capital asset effected in the previous year will be chargeable to income-tax under the head 'Capital Gains'.

To simplify the Capital gain tax meaning, the tax that is levied on capital gains is termed as capital gain tax. Such taxes are levied when an asset is transferred between owners. Though all capital gains are liable for taxation, the tax approach for long-term gains tend to differ from that of short-term gain.

Two types of capital gains tax which are levied on long-term and short-term gains start from 10% and 15%, respectively. \*All savings are provided by the insurer as per the IRDAI approved insurance plan.

The capital gains tax is the levy on the profit that an investor makes when an investment is sold. It is owed for the tax year during which the investment is sold.

The long-term capital gains tax rates for the 2022 and 2023 tax years are 0%, 15%, or 20% of the profit, depending on the income of the filer.<sup>1</sup> The income brackets are adjusted annually.

An investor will owe long-term capital gains tax on the profits of any investment owned for at least one year. If the investor owns the investment for one year or less, short-term capital gains tax applies. The short-term rate is determined by the taxpayer's ordinary income bracket. For all but the highest-paid taxpayers, that is a higher tax rate than the capital gains rate.

Capital gains taxes are due only after an investment is sold. Capital gains taxes apply only to "capital assets," which include stocks, bonds, digital assets like crypto currencies and NFTs, jewelry, coin collections, and real estate.

Long-term gains are levied on profits of investments held for more than a year. Short-term gains are taxed at the individual's regular income tax rate. For everyone other than the wealthiest, that's higher than the tax on long-term gains.



**Custom Duty:**

The customs duty is collected on all goods entering the country to ensure that they are taxed and paid for. It is levied on both export and import of goods and is important in regulating trade as well as being a source of revenue to the government.

**Excise Duty:**

This is a commodity tax in the true sense as it is levied on the production of goods and not on its sales. It is levied by the Central Government but for alcohol/liquor and narcotics/drugs. Unlike custom duty, this applies only to goods produced in India. It is also called the Central Value Added Tax (CENVAT).

**Service Tax:**

Here the product taxed is a service. In India, service tax was initially on the services of telephone, share broking, and general insurance. This circle includes far more services since then and now it has been replaced by a consolidated Goods and Service tax.

**Value Added Tax:**

This tax was introduced because of India's indirect tax structure being weak that created quite a stir. Value Added tax has a self-monitoring means which makes the administration of this tax simple. VAT is applicable in India in All-Union Territories and States except for the Union Territories of Andaman and Nicobar and Lakshadweep.

**GST:**

After GST came into force, direct and indirect taxes were collected by the three bodies of the government until 1 July 2017. Various indirect taxes which were imposed by the central and state government are incorporated by GST. Both the central and state government collect indirect tax through the intrastate supply of goods and services.

**Effects of direct taxation and comparison of indirect taxation:**

Direct taxation has a few advantages and also some inconveniences in comparison of indirect taxes. It promotes equality and equity because direct taxes are based on ability to pay of taxpayers and in the case of a progressive tax structure, every person is taxed differently depending on his income. Another advantage of direct taxation is that the government and the taxpayer know the amount they will receive and they pay, even before the collection of the tax. Direct taxation and in particular income tax act as

automatic stabilizers. Some direct taxes are easy to collect for the government and the fiscal administration because they are collected at the source. Yet, tax collection can be expensive depending on the efficiency of the fiscal administration. Running the tax collection office have some administrative costs (keeping the records of incomes of the population for example), in particular when different tax rates are applied. Moreover, direct taxes can be evaded (tax evasion affects mainly direct taxes) whereas indirect taxes cannot be evaded (when the taxed transaction occurs, it is not possible to avoid the burden of the tax).

Direct taxes decrease the savings and earnings of individuals and firms. Indirect taxation however make goods and services more expensive (the burden of the tax is reflected in the prices). Contrary to indirect taxation which leads to inflation (increasing of the prices), direct taxes can help to reduce inflation.

There is no consensus among the academic literature to designate if direct taxation is more efficient or not. Earlier works based on static models favour direct taxation whereas the recent literature, based on neoclassical growth models, shows that indirect taxation is more efficient. The conclusions of these debates are that the answers are mostly conjectural, depending on the economic structure.

Moreover, direct taxation are transfers which can have a redistributive preoccupation (combined with the will of increasing tax revenue). Indeed, taxation is a main tool of the redistributive function of the government identified by Richard Musgrave in his *The Theory of Public Finance* (1959). A progressive direct taxation could participate in the reduction of inequalities and correcting difference in living standards among the population.

Another effect of a progressive direct taxation is that such tax structure act as automatic stabilizers when prices are stable. Indeed, when incomes (in the example of a progressive income tax) decrease, as a result of recession, the average tax rate is reduced – individuals have to face lower tax rates because their earnings and their incomes have been reduced. And similarly, when incomes are increasing, the average tax rate increases also. This mechanism of progressive taxation participates to the stabilization of the economy, another function of the government in the works of Musgrave (stabilization branch of the government which prevents major fluctuations in real GDP). When

incomes fall, tax revenues fall too (and in the case of progressive taxation, even tax rates drop also) reducing tax burden on taxpayer.

### **IMPORTANCE OF DIRECT TAX IN INDIA:**

Taxation, burden of obligatory collects on people or entities by governments. Taxes are collected in pretty much every nation of the world, basically to raise revenue for government expenditures, in spite of the fact that they fill different needs too. In present day economies taxes are the most significant wellspring of governmental revenue. Taxes contrast from different wellsprings of revenue in that they are obligatory requires and are pathetic, they are commonly not paid in return for some particular thing, for example, a specific public administration, the clearance of public property, or the issuance of public debt. While taxes are probably gathered for the welfare of taxpayers all in all, the individual taxpayer's obligation is autonomous of a particular advantage got. There are, in any case, significant exemptions: finance taxes, for instance, are ordinarily exacted on work income so as to finance retirement benefits, restorative installments, and other government managed savings programs—which are all liable to profit the taxpayer. On account of the possible connection between taxes paid and benefits got, finance taxes are now and then called "contributions" (as in the United States). By the by, the installments are usually obligatory, and the connection to benefits is now and then very powerless. Another case of a tax that is connected to benefits got, if just freely, is the utilization of taxes on engine powers to finance the development and upkeep of streets and roadways, whose services can be delighted in just by devouring taxed engine energizes. Amid the nineteenth century the predominant thought was that taxes should serve for the most part to finance the government. In prior occasions, and again today, governments have used taxation for other than simply fiscal purposes. One valuable approach to see the reason for taxation, owing to American economist Richard A. Musgrave, is to recognize goals of asset distribution, income redistribution, and monetary.

solidness. (Financial development or improvement and worldwide aggressiveness are now and again recorded as independent objectives, yet they can for the most part be subsumed under the other three.) Without a solid explanation behind impedance, for example, the need to diminish contamination, the primary goal, asset

designation, is facilitated if tax policy does not meddle with market-decided allotments. The second target, income redistribution, is intended to diminish imbalances in the conveyance of income and riches. The goal of adjustment—actualized through tax policy, government expenditure policy, monetary policy, and debt the executives—is that of keeping up high work and value steadiness.[11]<sup>11</sup>

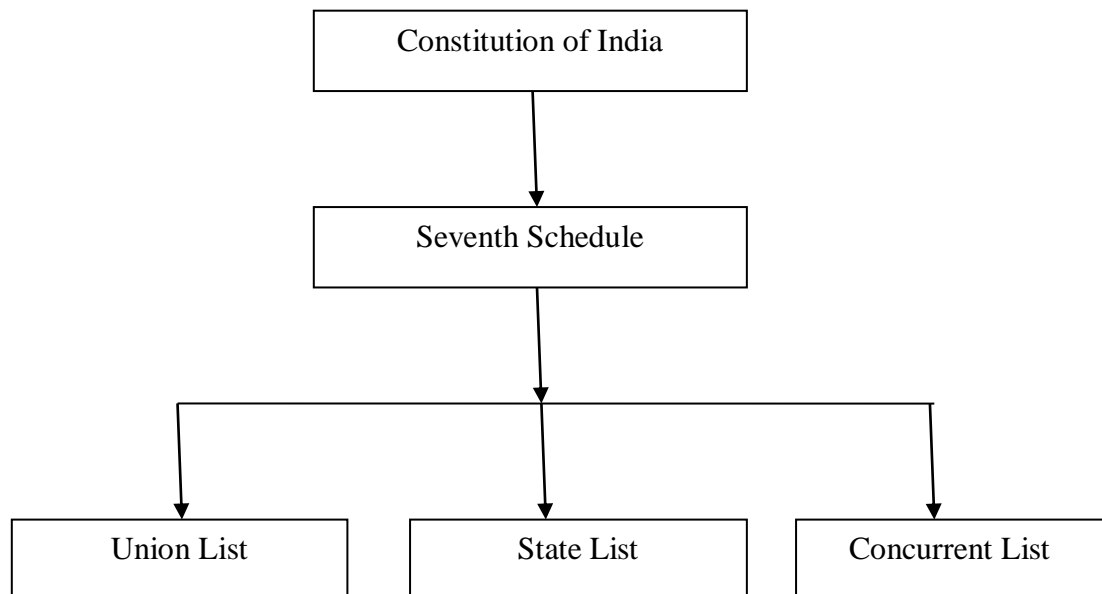
Both immediate and back handed taxes are significant for our nation as they are connected with the general economy. Both are gathered by the central and particular state governments as indicated by the sort of tax exacted and are significant for the government just as development point of view of the nation.

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<sup>11</sup> <https://www.economicstimes.com>

## **2.1-LAW OF TAXATION AND CONSTITUTION OF INDIA:**

Here I attempt to give overview of the taxation law in the constitution of India. The constitution has supreme power it sets the structure that democrates political code, fundamental right, procedures, powers, duties of government , duties of citizens , directive principles, Constitution has power to authorize all the laws in India. Parliament and state legislature get power to execute various law from constitution. Whereas tax is the sum imposed by the government on citizens and enterprises and taxation law deals with the rules and regulations that set down that when and how much tax should be paid to local, state and federal authorities. It is the most important ingredient for the country which keeps the revenue consistent and helps in growth of economy. Article 265 to Article 289 of constitution deals with the provision of tax.



The system of taxation is the backbone of a nation's economy which keeps revenue consistent, manages growth in the economy, and fuels its industrial activity. India's three-tier federal structure consists of Union Government, the State Governments, and the Local Bodies which are empowered with the responsibility of the different taxes and duties, which are applicable in the country. The local bodies would include local councils and the municipalities. The government of India is authorized to levy taxes on individuals

and organizations according to the Constitution. However, Article 265 of the Indian constitution states that the right to levy/charge taxes hasn't been given to any except the authority of law. The 7th schedule of the constitution has defined the subjects on which Union/State or both can levy taxes. As per the 73rd and 74th amendments of the constitution, limited financial powers have been given to the local governments which are enshrined in Part IX and IX-A of the constitution.

A tax may be defined as a monetary burden rested upon individuals or people with property to help add to the government's revenue. Tax is, therefore, a mandatory contribution and not a voluntary payment or donation which one decides on one's own. It is a payment exacted by the legislative authority. It may be direct tax or indirect tax. Revenue growth which may be a little faster than GDP (Gross Domestic Product) can result from revenue mobilization with an effective tax system and measures.

The government uses this tax to carry out functions such as:

Social welfare projects like schools, hospitals, housing projects for the poor, etc.

Infrastructure such as roads, bridges, flyovers, railways, ports, etc.

Security infrastructure of the country such as military equipment

Enforcement of law and order

Pensions for the elderly and benefits schemes to the unemployed or the ones below the poverty line.

#### Characteristics of a good tax structure:

A good tax system as a whole should be equitable and be fairly leading to equal distribution of wealth in the community.

It should be effective and yield the required revenue for the government.

The collection of taxes is a major task and it should be economical.

The development of trade and industry should not be hampered by the burden of taxes.

The taxes levied should give a clear picture to the government of its revenue.

The tax system should be based on comprehensive and up-to-date statistical information enabling accurate forecasting.

The tax system should also be simple and elastic so that it can respond to the new needs of the State.

While distributing the burden of taxes, the ability of the tax-payers should be considered.

### **Taxation system in India:**

Taxes play contribution in total revenues. The Indian tax system is called three tier federal structure which includes, central government, state government and local municipal body.

#### **Article 256 :**

No one can levy or collect the tax without the permission of law.

Role of centre and state government in Indian Taxation system

Tax on custom duties, income tax service tax, central excise duty is collected by central government.

India's tax system is a three-tier federal structure which is made up of the following:

Union List (List 1 of the 7th schedule to the Constitution of India) contains those matters on which the Central Government has the power to make laws [Article 246(1)].

The State List has only those matters on which the State Government has the power to make laws [Article 246(3)].

The Concurrent List has those matters on which both the Central and State Governments have the power to make laws [Article 246(2)].

Law made by Union Government prevails whenever there is a conflict between the Centre and state concerning entries in the concurrent list. But if any provision repugnant to earlier law made by parliament is part of law made by the state, if the law made by the state government gets the assent of the President of India, it prevails.

#### **Distribution of powers of taxation:**

List 1 in the 7th schedule to the constitution has the powers of the Central Government listed in Entries 82-92B.

List 2 in the schedule has the powers of the State Government listed in Entries 45-63.

As regards list 3, it doesn't deal with taxation and hence both centre and state do not have any concurrent powers of taxation.

Entry 97 of List 1 in the 7th Schedule contains residuary powers of taxation belonging only to the centre.

## **Constitutional Provisions in Taxation in India:**

The roots of every law in India lie in the Constitution. Therefore understanding the provisions of the Constitution is foremost to have a clear understanding of any law. The Constitutional provisions regarding taxation in India can be divided into the following categories:

Constitutional provisions of taxation are referred under article 265 to article 289.

Only by the authority of law can taxes be levied. (Article 265)

Levy of duty on tax and its distribution between centre and states (Article 268, Article 269, and Article 270)

Restriction on power of the states to levy taxes (Article 286)

Sale/purchase of goods which take place outside the respective state

Sale/purchase of goods which take place during the import and export of the goods

Taxes imposed by the state or purpose of the state (Article 276, and Article 277)

Taxes imposed by the state or purpose of the union (Article 271, Article 279, and Article 284)

Grants-in-Aid (Article 273, Article 275, Article 274, and Article 282)

### **Article 265:**

No tax shall be levied or collected except by the authority of law, levy of taxes must be within the legislative power.

No presumption in levy of tax, for levy of tax fiscal statute must be read as whole.

Without the 'authority of law,' no taxes can be collected is what this article means in simple terms. The law here means only a statute law or an act of the legislature. The law when applied should not violate any other constitutional provision. This article acts as an armour instrument for arbitrary tax extraction.

In the case *Tangkhul v. Simirei Shailei*, all the villagers were paying Rs 50 a day to the head man in place of a custom to render free a day's labour. This was done every year and the practice had been continuing for generations. The Court, in this case, held that the amount of Rs. 50 was like a collection of tax and no law had authorized it, and therefore



it violated Art 265. Article 265 is infringed every time the law does not authorize the tax imposed.

### **Article 266:**

This article talks about consolidated funds and Public accounts of India and the states. Consolidated funds are those funds in which all the receipts of government of India are credited like tax, loans taken, treasury bills, etc.

All expenditure of government of India is done from consolidated fund of India from which money is appropriated after the permission of parliament.

1. Public account funds
2. Funds which are not credited in consolidated funds are credited to public account funds.
3. This includes remittances , provident fund deposits and so on. This account can be made without parliamentary authorization , such payments are of executive in nature such as banking transaction.

This article has provisions for the Consolidated Funds and Public Accounts of India and the States. In this matter, the law is that subject to the provisions of Article 267 and provisions of Chapter 1 (part XII), the whole or part of the net proceeds of certain taxes and duties to States, all loans raised by the Government by the issue of treasury bills, all money received by the Government in repayment of loans, all revenues received by the Government of India, and loans or ways and means of advances shall form one consolidated fund to be entitled the Consolidated Fund of India. The same holds for the revenues received by the Government of a State where it is called the Consolidated Fund of the State. Money out of the Consolidated Fund of India or a State can be taken only in agreement with the law and for the purposes and as per the Constitution.[12]<sup>12</sup>

### **Article 267:**

Contingency funds are maintained by president and held by finance secretary on behalf of president. Such funds are used at the time of emergency such as natural calamities and crises like floods, tsunamis and earthquake.

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<sup>12</sup> <https://www.economicstimes.com>

### **Article 268:**

Under this article it is explained that the duties levied by the Union but they are collected and appropriated by the states. For eg. Stamp duties, excise duties on medical and toilet preparations.

The proceeds in any financial year of any such duty leviable within any state shall not form part of the consolidated fund in India, but shall be assigned to that state.

This gives the duties levied by the Union government but are collected and claimed by the State governments such as stamp duties, excise on medicinal and toilet preparations which although are mentioned in the Union List and levied by the Government of India but collected by the state (these duties collected by states do not form a part of the Consolidated Fund of India but are with the state only) within which these duties are eligible for levy except in union territories which are collected by the Government of India.

### **Article 269:**

Taxes levied and collected by central government but assigned to the states.

According to clause (2) these taxes are namely:

- a. Duties in respect of succession to property other than agriculture land
- b. Estate duty in respect of property other than agricultural land.
- c. Terminal taxes on goods or persons carried by railway , port or airlines.
- d. Taxes on railway fares and freights.
- e. Taxes other than stamp duties on transactions in stock exchanges and future markets.
- f. Taxes on the sale or purchase of newspaper and on advertisements published therein.
- g. Taxes on the sale or purchase of goods other than newspaper where such sale or purchase takes place in the course of interstate trade or commerce.
- h. Taxes on consignment of goods

Article 269 provides the list of various taxes that are levied and collected by the Union and the manner of distribution and assignment of Tax to States. In the case of *M/S. Kalpana Glass Fibre Pvt. Ltd. Maharashtra v. State of Orissa and Others*, placing faith in a judgement of the Apex Court in the case of *Gannon Dunkerley & Co. and others v.*

State of Rajasthan and others, the advocate from the appellant side submitted that to arrive at a Taxable Turnover, turnover relating to inter-State transactions, export, import under the CST Act are to be excluded. Thus, the provision of the State Sales Tax Act is always subject to the provisions of Sections 3 and 5 of the CST Act. Sale or purchase in the course of interstate trade or commerce and levy and collection of tax thereon is prohibited by Article 269 of the Constitution of India.

### **Article 269(A):**

101st amendment act in 2016

Levied and collection of goods and services tax in course of interstate trade or commerce

Goods and services tax is collected and levied by central government of India.

It is not the part of consolidated fund rather it is divided into union and state on the basis of the law made by parliament on the recommendation of GST Council.

This article is newly inserted which gives the power of collection of GST on inter-state trade or commerce to the Government of India i.e. the Centre and is named IGST by the Model Draft Law. But out of all the collecting by Centre, there are two ways within which states get their share out of such collection

Direct Apportionment (let say out of total net proceeds 42% is directly apportioned to states).

Through the Consolidated Fund of India (CFI). Out of the whole amount in CFI a selected prescribed percentage goes to the States.

### **Article 270 :**

This article talks about those taxes which are levied and distributed between union and state except A- 268, 269 and 269 A.,

Surcharge on taxes and duties in article 271 and cess levied for specified purpose under any law made by parliament, these all are not part of CFI and they are divided on the basis of finance commission on recommendation of president.

This Article gives provision for the taxes levied and distributed between the Union and the States:

All taxes and duties named within the Union List, except the duties and taxes named in articles 268, 269 and 269A, separately.

Taxes and surcharges on taxes, duties, and cess on particular functions which are specified in Article 271 under any law created by Parliament are extracted by the Union Government.

It is distributed between the Union and the States as mentioned in clause (2).

The proceeds from any tax/duty levied in any financial year, is assigned to the states where this tax/duty is extractable in that year but it doesn't form a part of the Consolidated Fund of India.

Any tax collected by the centre should also be divided among the centre and states as provided in clause (2).

With the introduction of GST 2 sub-clauses having been added to this Article- Article 270(1A) and Article 20(1B7).

### **Cess and Surcharge:[13]**<sup>13</sup>

Cess is a tax on tax. It is described under article 270 of constitution of India it is also called subtax. Cess is for a specific purpose and the amount of cess goes to consolidated fund of India. For eg; Educational cess and Swachh Bharat cess e

Surcharge is also tax on tax , it is levied on specific limit usually higher income groups. Amount of surcharge is also goes to CFI , surcharge is not levied for specific purpose but it is levied on specified people mainly higher income groups.

The Supreme Court of India has set a famous judicial precedent under Article 270 of the Constitution of India in the case T.M. Kannian v. I.T.O. The SC, in this case, propounded that the Income-tax collected forms a part of the Consolidated Fund of India. The Income-tax thus extracted cannot be distributed between the centre, union territories, and states which are under Presidential rule.

### **Article 271:**

At times the Parliament for the Union Government (only when such a requirement arises), decides to increase any of the taxes /duties mentioned in article 269 and Article 270 by levying an additional surcharge on them and the proceeds from them form a part

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<sup>13</sup> <https://www.incometaxindia.gov.in>

of the Consolidated Fund of India. Article 271 is an exception to Article 269 and Article 270. The collection of the surcharge is also done by the Union and the State has no role to play in it.

There seems to be a lot of confusion between cess and surcharge. Cess is described in Article 270 of the Constitution of India. Cess is like a fee imposed for a particular purpose that the legislation charging it decides. Article 271 deals with a surcharge which is nothing but an additional tax on the existing tax collected by the union for a particular purpose. Proceeds from both the cess and surcharge form part of the Consolidated Fund of India In the case of m/s SRD Nutrients Private Limited v. Commissioner of Central Excise, Guwahati, the Supreme Court was presented with the question: If on excisable goods an education cess can be levied before the imposition of cess on goods manufactured but cleared after imposition of such cess. The judgement given in this case was in favour of the manufacturer but the judges, Justice A K Sikri and Justice Ashok Bhushan observed that education and higher education cess are surcharges.

### **Grants-in-aid:**

The constitution has provisions for sanctioning grants to the states or other federating units. It is Central Government financial assistance to the states to balance/correct/adjust the financial requirements of the units when the revenue proceeds go to the centre but the welfare measures and functions are entrusted to the states. These are charged to the Consolidated Fund of India and the authority to grant is with the Parliament.

### **Article 273 :**

Grants in lieu of export duty on jute and jute products in states Assam, Bihar, Orissa, and West Bengal and this grant shall be charged on the consolidated fund of India (CFI).

This grant is charged to the Consolidated Fund of India every year in place of any share of the net proceeds, export duty on products of jute to the states of Assam, Bihar, Orissa, and West Bengal. This grant will continue and will be charged to the Consolidated Fund of India as long as the Union government continues to levy export duty on jute, or products of jute or the time of expiration which is 10 years from its commencement.

**Article 274:**

Talks about the taxes in which states are interested such as agricultural income, for that prior recommendation of president is required to bills affecting taxation in which states are interested

**Article 275 :**

Talks about that grants from Union to State for schemes and developments , welfare of SC and ST and thirdly that administration development of autonomous district of Assam. These grants are sanctioned as the parliament by law decides to give to those states which are in dire need of funds and assistance in procuring these funds. These funds /grants are mainly used for the development of the state and for the widening of the welfare measures/schemes undertaken by the state government. It is also used for social welfare work for the Scheduled tribes in their areas.

**Article 276:**

This article talks about the taxes that are levied by the state government, governed by the state government and the taxes are collected also by the state government. But the taxes levied are not uniform across the different states and may vary. These are sales tax and VAT, professional tax and stamp duty to name a few.

The sixtieth amendment act of constitution of India amended article 276.

The article talks about that the extra taxes are levied on profession, trades and callings and employments and the limit of these taxes are Rs.2500.

**Article 277:**

Talks about that any taxes, duties , cesses or fees immediately before the commencement of the constitution, were being lawfully levied by the government of any state or any municipality or any other local authority may notwithstanding that those taxes, duties and cesses or fees are mentioned in the Union list continue to be levied by the same purpose until the provision to the contrary has been made by Parliament by law

Except for cesses, fees, duties or taxes which were levied immediately before the commencement of the constitution by any municipality or other local body for the purposes of the State, despite being mentioned in the Union List can continue to be levied and applied for the same purposes until a new law contradicting it has been passed by the parliament.

In the case Hyderabad Chemical and Pharmaceutical Works Ltd. v. State of Andhra Pradesh, the appellant was manufacturing medicines for making which they had to use alcohol, the licenses for which were procured under the Hyderabad Abkari Act and had to pay some fees to the State Government for the supervision. But the parliament passed the Medicinal and Toilet Preparations Act, 1955 under which no fee had to be paid but the petitioner challenged the levy of taxes by the state after the passing of the Medicinal and Toilet Preparations Act, 1955 because according to Article 277, entry 84 of list 1 in the 7th schedule, the state could not levy any fee. The difference between tax and fee was explained. Proceeds from tax collection are used for the benefit of all the taxpayers but a fee collected is used only for a specific purpose.

**Article 279:**

This article deals with the calculation of “net proceeds” etc. Here ‘net proceeds’ means the proceeds which are left after deducting the cost of collection of the tax, ascertained and certified by the Comptroller and Auditor-General of India.

Talks about calculation of net proceeds and its partition here net proceeds are actual amount after deducting the cost inferred from the collection of Tax. And this amount apportioned between union and state

**Article 279A :**

The article defines GST council clause 1 of the article says that when the 101 amendment passes president constitutes a council namely GST council.

The chairperson of that council will be the union finance minister and the union ministers of state in charge of revenue of finance is the member, the minister in charge of finance or taxation or any other minister nominated by each state governments are the members.

The council can give the recommendation on cess, tax , surcharge levied by the union and state and other local bodies, the goods and services that may be exempted from the GST GST laws and on what basis it is decided and appointment principles and threshold limit of turnover, baserate, special rate for the special purposes like for natural calamity or special provisions on respect of hilly areas or northeast states. ( Arunachal Pradesh, Mizoram, Kashmir, Manipur, Meghalya, Nagaland ,Uttrakhand and Himachal Pradesh)

GST council shall recommend the date on which the goods and services tax shall be levied on petroleum , crude oil, high speed diesel, natural gas, aviation turbine fuel.

**Article 282 :**

The Union or a state may make any grants for any public purpose , notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the state , as the case may be, may make laws.

It is normally meant for special, temporary or ad hoc schemes and the power to grant sanctions under it is not restricted. In the case *Bhim Singh v. Union of India & Ors* the Supreme Court said that from the time of the applicability of the Constitution of India, welfare schemes have been there intending to advance public welfare and for public purposes by grants which have been disbursed by the Union Government. In this case, the Scheme was MPLAD (Member of Parliament Local Area Development Scheme) and it falls within the meaning of ‘public purpose’ to fulfil the development and welfare projects undertaken by the state as reflected in the Directive Principles of State Policy but subject to fulfilling the constitutional requirements. Articles 275 and 282 are sources of granting funds under the Constitution. Article 282 is normally meant for special, temporary or ad hoc schemes and the power to grant sanctions under it is not restricted. In the case *Cf. Narayanan Nambudripad, Kidangazhi Manakkal v. State of Madras*, the Supreme Court held that the practice of religion is a private purpose. And donations and endowments made are therefore not a state affair unless the state takes the responsibility of the management of such religious endowment for a public purpose and uses the funds for public welfare measures. So it can be seen that Article 282 can be used for a public purpose but at times in the name of public purpose it can even be misused.

**Article 286:**

This article restricts the power of the State to tax

- 1) The state cannot exercise taxation on imports/exports nor can it impose taxes outside the territory of the state.
- 2) Only parliament can lay down principles to ascertain when a sale/purchase takes place during export or import or outside the state. (Sections 3, 4, 5 of the Central Sales Tax Act, 1956 have been constituted with these powers)



3) Taxes on sale/purchase of goods that are of special importance can be restricted by the parliament and the State Government can levy taxes on these goods of special importance subject to these restrictions (Section 14 and Section 15 of Central Sales Act, 1956 have been constituted to impose restrictions on the state Government to levy taxes on these goods of special importance). In the case of *K. Gopinath v. the State of Kerala*, Cashew nuts were purchased and imported by the Cashew Corporation of India from African suppliers and sold by it to local users after processing it. The apex court held that this sale was not in the course of import and did not come under an exemption of the Central Sales Tax Act, 1956. The issue before the court was to decide whether the purchases of raw cashew nuts from African suppliers made by the appellants from the cashew corporation of India) fall under the nature of import and, therefore protected from liability to tax under Kerala General Sales Tax Act, 1963. The judgment here went against the appellants. state cannot authorize the imposition of tax on supply of goods and services , where such supply takes place out snNide the state or where the export of the goods and services takes place out of territory of India.

Parliament by law formulate principles for determining when a supply of goods and services takes place in any way mentioned in clause (1)

### **Article 289 :**

State Governments are exempted from Union taxation as regards their property and income but if there is any law made by the parliament in this regard then the Union can impose the tax to such extent.

This article talks about exemption of property and income of state from union taxation.

The property and income of state are exempted from union taxation. Nothing in Clause (1) shall prevent the Union from imposing or authorizing the imposition of , any tax to such extent , if any , as Parliament made by law provide in respect of a trade or business of any kind carried on by or on behalf of the government of a state , or any operations connected therewith , or any property used or occupied for the purpose of such trade or business or any income accruing or arising in connection therewith.

**Some other tax-related provisions:[14]**<sup>14</sup>

Article 301 which states that trade, commerce and inter-course are exempted from any taxation throughout India except for the provisions mentioned in Article 302, 303, and 304 of the Indian Constitution, 1949.

Article 302 empowers the parliament to impose restrictions on trade and commerce in Article 303– Whenever there is the scarcity of goods this article comes in play. Discrimination against the different State Governments is not permitted under the law except when there is a scarcity of goods in a particular state and this preference to that state can be made only by the Parliament and in keeping with the law.

Article 304– permits a State Government to impose taxes on goods imported from other States and Union Territories but it cannot discriminate between goods from within the State and goods from outside the State. The State can also exercise the power to impose some restrictions on freedom of trade and commerce within its territory.

Article 366 Apart from all these provisions, there are other provisions also that require mention such as Article 366 which gives the definition of:

Goods

Services

Taxation state

Good and service Tax Ets

**Seventh schedule to constitution:[15]**<sup>15</sup>

Seventh schedule deals with division of subjects for powers and responsibilities in Union State and Concurrent list.

Seventh schedule has three types of list

Union list [Article 246 (1)]

Under this list Parliament authorised to make laws as per list 1 of seventh schedule

State list [ Article 246(3)]

Under this list state is authorised to make laws as per the list two of 7th schedule.

Concurrent list

Under this list both Union and State are authorised to make law

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<sup>14</sup> <http://www.legalserviceindia.com/legal/article-1712-constitutional-provisions-regarding-taxation.html>view of public interest

<sup>15</sup> <http://www.legalserviceindia.com/legal/article-1712-constitutional-provisions-regarding-taxation.html>

## **Distribution of Taxation Power :**

In a federal constitution the power of taxation is distributed among the federal and the provincial legislatures the central and the state legislatures. Our constitution makes a fine balance in the taxing powers of the Parliament and the state legislatures. Central government, State government, local government get power to impose tax from Indian

15-<http://www.legalserviceindia.com/legal/article-1712-constitutional-provisions-regarding-taxation.html>

Constitution.

Article 245 and Article 246 deals with distribution of Taxation power

### **Article 245 :**

Article 245 of constitution is extent of law made by parliament and by legislature of state, both the government have right to make laws. These are provided by constitution itself, these subject matters provided in 7th schedule of Indian constitution.

According to article 245 subject to provision of this constitution , Parliament may make laws for whole or any part of the territory of India and legislature can make law for any part of the State.

245(1)-Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State

245(2)-No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.

The powers of the legislature under Article 245 for the enactment of laws is an absolute power which is subject only to its legislative competence as well as the other constitutional limitations. Hence the power which is required to make a law includes the power to give an effect to it prospectively as well as retrospectively.

### **Article 246 :**

Article 246 deals with the 7th Schedule of the Indian Constitution that mentions three lists named as Union List, State List and Concurrent List which specify the divisions of power between Union and States.

Article 246A which was inserted into the Constitution is the most important operative provision for implementation of GST in India. It has provided the legislative competence to the Centre and the States to make laws with respect to GST. However, since article 246A begins with a non-obstante clause which overrides Articles 246 and 254, for a better understanding of article 246A, one need to understand articles 246 and 254 first. Article 246A categorically provide that the laws made by the Union as well as the States with respect to Goods and Services Tax will apply concurrently or simultaneously on the same transaction Article 246 is related to the distribution of subject matters on which central government or state government can make laws. It must be read with the 7th schedule of constitution.

## **2.2-INCOME TAX ACT 1961:**

The Income Tax Act of 1961 governs income tax legislation in India, along with the help of certain income tax rules, notifications, circulars, and judicial pronouncements, including tribunal judgments.

The Income-tax Act, 1961 is the charging statute of Income Tax in India. It provides for levy, administration, collection and recovery of Income Tax. The Government of India brought a draft statute called the "Direct Taxes Code" intended to replace the Income Tax Act, 1961 and the Wealth Tax Act, 1957.

India is now governed by the Income Tax Act of 1961 (IT Act). The current Income Tax Act was passed in 1961 and went into effect on April 1, 1962. The Income Tax Act was referred to the Law Commission by the government in 1956, and the report was submitted in 1958. Shri Mahavir Tyagi was appointed as Chairman of the Direct Tax Administration Enquiry Commission in 1958. The current Income Tax Act was created based on the suggestions of both of these groups. The 1961 Act has been revised several times since then.[16]<sup>16</sup>

### **Need for the Income Tax Act:**

The primary source of income for the government is taxes. The revenue generated by taxes is used to cover government expenses such as education, infrastructure amenities such as roads and dams, and so on. Taxes are collected for the fundamental aim of generating adequate income for the state. Taxes have come to be seen as a tool by which the economic and social ideals of a welfare state may be attained. As a result, the Income Tax Act of 1961 became necessary.

### **Applicability of the Income Tax Act, 1961:**

The Income Tax Act of 1961 applies to the entire country of India. The Income Tax Act addresses: The basis for charging revenue.

- Income that is not subject to income tax.

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<sup>16</sup> <https://www.incometaxindiagov.in>

- Income computation under multiple categories.
- Income grouping.
- Losses are set off and carried forward.
- Allowable deductions.
- Rebates and tax breaks.
- In certain exceptional circumstances, taxation is determined.
- Dividends paid by domestic corporations are subject to taxation.
- Income Tax Authorities and their Authorities.
- Surveillance, search, and seizure.
- Procedures for assessing.
- Tax collection and recovery, as well as tax deduction at source (TDS).
- Advance tax payment.
- Reimbursement.
- Revisions and appeals.
- Immovable property acquisitions.
- Punishment and prosecution.

### **Purpose of the Income Tax Act:**

The Income Tax Act's goals can be described as follows:

- To reduce income and wealth distribution inequalities.
- To accomplish the twin goals of better yields.
- To quicken the pace of the country's economic growth and development.
- To preserve appropriate economic stability and security of long-term inflationary pressures and short-term foreign price fluctuations.
- To make funds available for economic development.
- Minimize excessive wealth, income, and consumerism inequality through indeterminate productivity gains, offence, justice, and peace and stability.
- To encourage the purchase of new capital goods.
- To direct investment toward the industries that yield the most to growth in the economy.

### **Features of the Income Tax Act:**

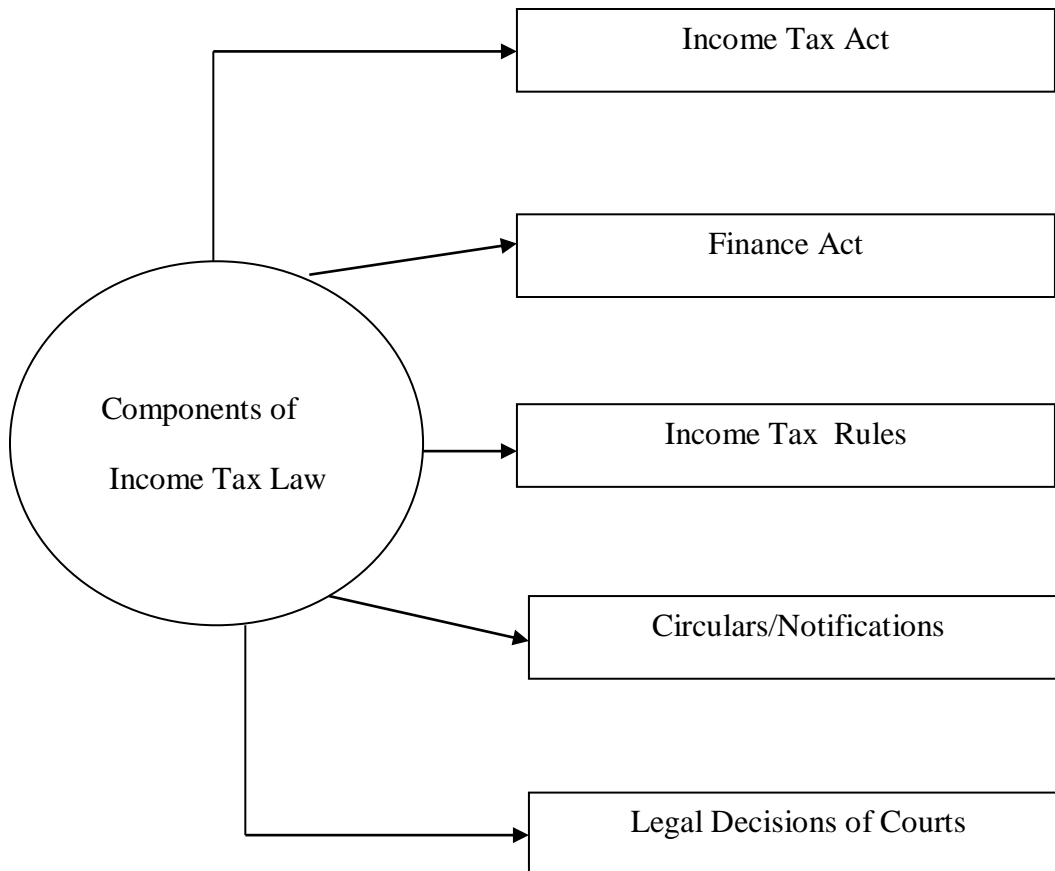
The amount payable when the government assesses taxes on the direct income of its residents under its authority is known as income tax. Income tax in India has a myriad of complexity, impediments, difficulties, and characteristics. Even if the entire procedure may appear to be challenging, effective treatment of the situation may have ramifications for the residents of the country. Income tax is a means by which the government guarantees that community activities and public tasks are carried out properly and in a timely way.

The basic features of the act are as follows:

1. Income tax is levied on the preceding year's income at the rate specified by the Finance Act for the current assessing year.
2. Income tax is imposed on a person based on his or her previous year's earnings.
3. The responsibility of the taxpayer is calculated based on his residence status in the prior year.
4. Income tax liability occurs only when overall revenue in the financial year exceeds the threshold tax-free amount established by the Finance Act for that relevant year.
5. Income tax rates are progressive, which means that the tax burden increases as income rises.
6. It is mandatory to deduct taxes at the source and deposit them in the government's treasury.

## COMPONENTS OF INCOME TAX LAW :

Income Tax Act Finance Act Income Tax Rules Circulars/Notifications Legal Decisions of Courts:-



The various components of income-tax law are explained below:

1. Income Tax Act 1961: The levy of income-tax in India is governed by the Income-tax Act, 1961. In this book we shall briefly refer to this as the Act.
  - It contains 298 sections and XIV schedules.
  - It came into force on 1st April, 1962.
  - A section may have sub-sections, clauses and sub-clauses. For example,

The clauses of section 2 define the meaning of terms used in the Income-tax Act, 1961. Clause (1A) defines agricultural income clause (1B) defines amalgamation and so



on. Likewise, the clauses of section 10 contain the exemptions in respect of certain income, like clause (1) provides for exemption of agricultural income and clause (2) provides for exemption of share income of a member of a hindu undivided family and so on.

Section 5 defining the scope of total income has two sub-sections and (2). Sub-section (1) defines the scope of total income of a resident and sub-section (2) defines the scope of total income of a non-resident.

- A section may also have Provisos and Explanations.

The Proviso(s) to a section/sub-section/clause spells out the exception(s) to the provision contained in the respective section/sub- section/clause.

The Explanation to a section/sub-section/clause gives a clarification relating to the provision contained in the respective section/sub- section/clause.

For example, Sections 80GGB and 80GGC provides for deduction from gross total income in respect of contributions made by Indian companies and other persons, respectively, to political parties or an electoral trust. The proviso to sections 80GGB and 80GGC provide that no deduction shall be allowed under those sections in respect of any sum contributed by cash to political parties or an electoral trust. Thus, the proviso to these sections spell out the circumstance when deduction would not be available there under in respect of contributions made.

- The Explanation below section 80GGC provides that for the purposes of sections 80GGB and 80GGC, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951. Thus, the Explanation clarifies that the political party has to be a registered political party. 8 PP-DTL&P • It undergoes change every year with additions and deletions brought out by the Annual Finance Act passed by Parliament.

- In pursuance of the power given by the Income-tax Act, 1961 rules have been framed to facilitate proper administration of the Income-tax Act, 1961.

The Income Tax Act 1961 is an all-inclusive statute governing the different tax regulations in India. The act ensures that taxes are timely and judiciously levied, administered, collected, and recovered for the Indian Government.

The income tax amount including, surcharges (if any) and cess, are charged at a rate prescribed by the Central Act for a particular assessment year.

The Income Tax Act provides several provisions for levying the tax on the income earned in advance along with the income with respect to the amount which has not been received to date.

As a taxpayer, not only should you pay your income tax on time but keep track of the TDS deducted while calculating the final tax liability at the end of the financial year.

Whether you are a salaried employee or a self-employed business person, paying income tax on time every year is your duty as a citizen. And to help you understand income tax better, in this article, we have explained everything you need to know about the Income Tax Act 1961.

The concept of income tax has prevailed in India for many years. But it was James Wilson, the first British finance member, who introduced the modern Income Tax Act in

1860. Although numerous acts on taxation have been introduced even after that, the one that stood the test of time is the Income Tax Act 1961.

The Income Tax Act 1961 is a comprehensive set of laws that oversees the various tax rules and regulations in the country. It ensures that every year taxes are timely and rightly levied, collected, administered, and recovered for the Indian Government and was implemented in 1961.

There are 23 chapters and 298 sections under the Income Tax Act 1961, as mentioned on the official Income Tax Department website. These various sections deal with different taxation aspects in the country.

**The income tax amount that one needs to pay depends upon their annual income. The various heads for which one has to pay taxes are:[17]<sup>17</sup>**

Salary

House property income.

Capital gains.

Profits from profession or business.

Income gains from other sources.

Every year, in the month of February, the Indian Government introduces some amendments in the Income Tax Act 1961 to make it relevant to its contemporary era. It includes taxation slabs changes wherever they are applicable.

After the amendments are made to the Act, they become a part of it upon the Indian President's approval and are declared to the general public in the same financial year.

### **Objectives of the Income Tax Act 1961:**

As with every other Act, the Income Tax Act, 1961 also has some objectives for which they are made. Where as all important objectives are below listed of the Income Tax Act, 1961.

#### **Economic Development:**

One of the major objectives of this Act is the economic growth or economic development of the country. The economic growth or economic development of a country is directly proportional to the growth of capital formation of the country. To overcome the scarcity of capital, the government introduced the Income Tax Act, 1961, which mobilized the resources of the country so that a rapid accumulation of capital could take place. The imposition of new taxes or making the taxes higher will help in the process of capital formation smoothly.

#### **Full Employment:**

The second objective of the Income Tax Act, 1961 is employment. The employment rate in a country depends upon the effective demand for skilled professionals and the supply 1

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<sup>17</sup> <https://www.economicstimes.com>

of well-paying jobs. For this, the tax rates have to be cut down to achieve the goal of full employment. In return, the demand for goods and services will be higher, resulting in capital formation in the country as it will give rise to both employment and income by the multiplier mechanism.

### **Stability of Price:**

The importance of stable prices is high. With the implementation of the Income Tax Act, 1961, ensuring price stability becomes easier, even though it is a short-term goal of taxation. Under this Act, the authorities made easy control over the inflation of prices. With the increase in direct taxes, there has been controlling private spending. Hence, the pressure is reduced on the commodity market. But, opposite effects on the market and growth can take place if the prices are reduced during the deflation.

### **Control over Cyclical Fluctuations:**

Controlling the cyclical economic fluctuations is another objective of this Act. During an economic depression in the country, taxes are lowered, whereas, in the case of an economic boom, there is an increment in taxes so that cyclical fluctuations in monetary value break.

### **Reduction for the BOP Difficulties:**

Taxes like custom duties are also levied under the Income Tax Act, 1961, to control the import of certain goods. It is also done to reduce the balanced intensity of payment difficulties as well as encourage domestic production of substitutes for imports.

### **Non-Revenue Objective:**

The non-revenue objective of the Income Tax Act, 1961, encourages the inequalities in the wealth and income of the citizens. This is done by levying higher amounts of tax for the rich people than the poor and introducing a system of progressive taxation methods.

### **Sections Under the Income Tax Act 1961:[18]**

There is a long list of sections under the Income Tax Act 1961. Each of these sections 4-

18-[https://www.taxmanagementindia.com/visitor/detail\\_article.asp?ArticleID=981](https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=981)

deals with different aspects of taxation in India. The Indian Government has to present a Finance Budget every year during the time of February. With the Finance Budget, there are many amendments introduced in the Income Tax Act.

Let's take a look at all the IT Act Chapters along with their related sections and subsections in the Income Tax Act.

**Chapter I:** This is the first section that introduces the IT Act and gives a basic idea about it.

**Chapter II:** This chapter mentions the commencement as well as the extent of the IT Act.

**Chapter III:** The third chapter is all about the charge on income tax, dividend income, the scope of income, and the income arising as a result of working in a different country, and so on.

**Chapter IV:** This chapter deals with all kinds of income that are exempted from the total income. These include incomes from trusts, property, institutions, political party incomes, and many more.

## **A.—Salaries[18]<sup>18</sup>**

### **SECTION 15-**

A-The following income shall be chargeable to income-tax under the head “Salaries”—

any salary due<sup>84</sup> from an employer or a former employer to an assessee in the previous year, whether paid<sup>84</sup> or not;

B-any salary paid<sup>84</sup> or allowed<sup>84</sup> to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

C- any arrears of salary paid or allowed to him in the previous year by or on behalf of an

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<sup>18</sup> <https://www.economicstimes.com>

employer or a former employer, if not charged to income-tax for any earlier previous year

### **Deductions from salaries:**

#### **SECTION 16.**

The income chargeable under the head Salaries shall be computed after making the following deductions, namely :—

(i) 88[\*\*\*]

[(ii) a deduction in respect of any allowance in the nature of an entertainment allowance specifically granted by an employer to the assessee who is in receipt of a salary from the Government, a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or five thousand rupees, whichever is less;]

[(iii) a deduction of any sum paid by the assessee on account of a tax on employment within the meaning of clause (2) of article 27691 of the Constitution, leviable by or under any law.]

(iv) 92[\*\*\*]

(v) 93[\*\*\*]

Salary “perquisite” and “profits in lieu of salary” defined

#### **SECTION 17(1)** [19]<sup>19</sup>

For the purposes of sections 15 and 16 and of this section,—

(1) salary includes:-

(i) wages;

(ii) any annuity or pension;

(iii) any gratuity.

(iv) any fees<sup>96</sup>, commissions, perquisites or profits in lieu of or in addition to any salary or wages;

(v) any advance of salary

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<sup>19</sup> <http://www.legalserviceindia.com/legal/article-1712-constitutional-provisions-regarding-taxation.html>

[ any payment received by an employee in respect of any period of leave not availed of by him;]

(vi) the annual accretion to the balance at the credit of an employee participating in a recognized provident fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule;

(vii) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof; and

(viii) the contribution made by the Central Government 99[or any other employer] in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD;

## **SECTION 17(2)**

“perquisite” includes—

2 (i) the value of rent-free accommodation provided to the assessee by his employer;

(ii) the value of any concession in the matter of rent<sup>3</sup> respecting any accommodation provided to the assessee by his employer;

[Explanation

1.—For the purposes of this sub-clause, concession in the matter of rent shall be deemed to have been provided if,—

[(a) in a case where an unfurnished accommodation is provided by any employer other than the Central Government or any State Government and—

(i) the accommodation is owned by the employer, the value of the accommodation determined at the specified rate in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(ii) the accommodation is taken on lease or rent by the employer, the value of the accommodation being the actual amount of lease rental paid or payable by the employer or fifteen per cent of salary, whichever is lower, in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;]

(b) in a case where a furnished accommodation is provided by the Central Government or any State Government, the licence fee determined by the Central Government or any State Government in respect of the accommodation in accordance with the rules framed by such Government as increased by the value of furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the aggregate of the rent recoverable from, or payable by, the assessee and any charges paid or payable for the furniture and fixtures by the assessee;

(c) in a case where a furnished accommodation is provided by an employer other than the Central Government or any State Government and—

(i) the accommodation is owned by the employer, the value of the accommodation determined under sub-clause (i) of clause (a) as increased by the value of the furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(ii) the accommodation is taken on lease or rent by the employer, the value of the accommodation determined under sub-clause (ii) of clause (a) as increased by the value of the furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(d) In a case where the accommodation is provided by the employer in a hotel (except where the assessee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another), the value of the accommodation determined at the rate of twenty-four per cent of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, whichever is



lower, for the period during which such accommodation is provided, exceeds the rent recoverable from, or payable by, the assessee.

Explanation 2.—For the purposes of this sub-clause, value of furniture and fixture shall be ten per cent per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the assessee during the previous year

Explanation 3.—For the purposes of this sub-clause, “salary” includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called, from one or more employers, as the case may be, but does not include the following, namely:—

- (a) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned
- (b) employer’s contribution to the provident fund account of the employee;
- (c) allowances which are exempted from the payment of tax;
- (d) value of the perquisites specified in this clause;
- (e) any payment or expenditure specifically excluded under the proviso to this clause.]

Explanation 4.—For the purposes of this sub-clause, “specified rate” shall be

- (i) fifteen per cent of salary in cities having population exceeding twenty-five lakhs as per 2001 census
- (ii) ten per cent of salary in cities having population exceeding ten lakhs but not exceeding twenty-five lakhs as per 2001 census; and
- (iii) seven and one-half per cent of salary in any other place;]

the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases—

(a) by a company to an employee who is a director thereof;

(b) by a company to an employee being a person who has a substantial interest in the company;

(c) by any employer (including a company) to an employee to whom the provisions of paragraphs (a) and (b) of this sub clause do not apply and whose income 7 [under the head “Salaries” (whether due from, or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds 8[fifty] thousand rupees:]

[Explanation.—For the removal of doubts, it is hereby declared that the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate for the purposes of this sub-clause;]

(iv) any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee;

(v) any sum payable by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund 12[or a Deposit-linked Insurance Fund established under section 3G of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or, as the case may be, section 6C of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952)], to effect an assurance on the life of the assessee or to effect a contract for an annuity;

the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee.

Explanation.—For the purposes of this sub-clause,—

(a) “specified security” means the securities as defined in clause (h) of section 215 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and, where employees’ stock

option has been granted under any plan or scheme there for, includes the securities offered under such plan or scheme;

(b)“sweat equity shares” means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called

(c) the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from, the assessee in respect of such security or shares;

(d) “fair market value” means the value determined in accordance with the method as may be prescribed

(e) “option” means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price;

(vii)the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds one lakh rupees; and

(viii) the value of any other fringe benefit or amenity<sup>16</sup> as may be prescribed<sup>17</sup>:]

[Provided that nothing in this clause shall apply to,—

(i) the value of any medical treatment provided to an employee or any member of his family in any hospital maintained by the employer

(ii) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family—

(a) in any hospital maintained by the Government or any local authority or any other hospital approved<sup>20</sup> by the Government for the purposes of medical treatment of its employees;

- (b) in respect of the prescribed diseases<sup>21</sup> or ailments, in any hospital approved by the Chief Commissioner having regard to the prescribed guidelines<sup>22</sup> :

Provided that, in a case falling in sub-clause (b), the employee shall attach<sup>23</sup> with his return of income a certificate from the hospital specifying the disease or ailment

for which medical treatment was required and the receipt for the amount paid to the hospital;]

- (ii) any portion of the premium paid by an employer in relation to an employee, to effect or to keep in force an insurance on the health of such employee under any scheme approved by the Central Government <sup>24</sup>[or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999),] for the purposes of clause (ib) of sub-section (1) of section 36;
- (iii) any sum paid by the employer in respect of any premium paid by the employee to effect or to keep in force an insurance on his health or the health of any member of his family under any scheme approved by the Central Government <sup>25</sup>[or the Insurance Regulatory and Development Authority established under subsection (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999),] for the purposes of section 80D

any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family

- (iv) [other than the treatment referred to in clauses (i) and (ii)]; so, however, that such sum does not exceed <sup>26</sup>[fifteen] thousand rupees in the previous year;

- (v) any expenditure incurred by the employer on—

- (1) medical treatment of the employee, or any member of the family of such employee, outside India;
- (2) travel <sup>27</sup>[and] stay abroad of the employee or any member of the family of such employee for medical treatment;
- (3) travel and stay abroad of one attendant who accompanies the patient in connection with such treatment,

subject to the condition that—

- (A) the expenditure on medical treatment and stay abroad shall be excluded from perquisite only to the extent permitted by the Reserve Bank of India; and
- (B) the expenditure on travel shall be excluded from perquisite only in the case of an employee whose gross total income, as computed before including therein the said expenditure, does not exceed two lakh rupees;]
- (vi) any sum paid by the employer in respect of any expenditure actually incurred by the employee for any of the purposes specified in clause (vi) subject to the conditions specified in or under that clause :

[Provided further that for the assessment year beginning on the 1st day of April, 2002, nothing contained in this clause shall apply to any employee whose income under the head “Salaries” (whether due from, or paid or allowed by, one or more employers) exclusive of the value of all perquisites not provided for by way of monetary payment, does not exceed one lakh rupees.]

Explanation.—For the purposes of clause (2),—

- (i) “hospital” includes a dispensary or a clinic 30[or a nursing home];
- (ii) “family”, in relation to an individual, shall have the same meaning as in clause (5) of section 10; and
- (iii) gross total income” shall have the same meaning as in clause (5) of section 80B .

**profits in lieu of salary includes**[20]<sup>20</sup>

- (i) the amount of any compensation<sup>33</sup> due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;
- (ii) any payment (other than any payment referred to in clause (10) 34[, clause (10A)] 35[, clause (10B)], clause (11), 36[clause (12) 37[, clause (13)] or clause (13A)] of section 10), due to or received by an assessee from an

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<sup>20</sup> <https://taxguru.in> > corporate-law > objective-implication

- (iii) employer or a former employer or from a provident or other fund 38[\* \* \*], to the extent to which it does not consist of contributions by the assessee or
- (iv) 39[interest on such contributions or any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—

For the purposes of this sub-clause, the expression “Keyman insurance policy” shall have the meaning assigned to it in clause (10D) of section 10;]

[(iii) any amount due to or received, whether in lump sum or otherwise, by any assessee from any person—

(A) before his joining any employment with that person; or

(B) after cessation of his employment with that person.]

**Chapter V:** The fifth chapter deals with the income of other people that forms a part of the assessee’s income. It can be capital gains, from house parties, from businesses, etc.

**Chapter VI:** This chapter deals with the income transfer without the actual transfer of assets. This includes both transfer and revocable transfer.

**Chapter VII:** This chapter is all about deductions that apply to certain kinds of payments and incomes.

**Chapter VIII:** This chapter deals with the share of members and rebates in a body or association.

**Chapter IX:** This chapter deals with the relief of double taxation rebated on the relief of income tax.

**Chapter X:** This chapter is all about special provisions where payment of income tax is avoided. It includes the agreements.

**Chapter X A:** It has a list of all the general avoidance rules for income tax.

**Chapter XII:** Pertains to tax calculations under special cases.

**Chapter XII A:** Deals with special incomes earned by NRIs. This chapter contains sections from 110 to 115 BBE. Under these sections, different kinds of taxes payable on different kinds of incomes, are listed.

**Chapter XII B:** It lists the special provisions for taxation which apply to the companies from sections 115 J to 115 JF.

**Chapter XII BB:** It deals with the taxation process for converting a foreign company into an Indian subsidiary.

**Chapter XII D:** Deals with the process of taxation on the profits made by a domestic company.

**Chapter XII DA:** Deals with the rules for tax on the distribution of income by the company.

**Chapter XII E:** Deals with the tax rules on the distribution incomes of holders of units.

**Chapter XII F:** This chapter elucidates taxes on the received income from capital venture companies or funds.

**Chapter XII G:** This chapter mentions special provisions for shipping company's taxation rules.

**Chapter XIII:** It lists all the income tax authorities and their information, such as their position, jurisdiction, appointment, control, disclosure of information, and power.

**Chapter XIV:** This chapter has a long list of sections that includes sections from 139 to 152. It also deals with all the return filing information and formalities.

**Chapter XIV A:** It includes provisions for all the repeated appeals like the ones pending in the Supreme Court or High Court.

**Chapter XV:** Deals with the liabilities for all cases and all the special and general provisions, recovery of tax from NRIs, companies, etc.

**Chapter XVI:** This chapter deals with the firms, their assessment, and the process of taxation, as well as the changes in the constitution, dissolution process, and succession.

**Chapter XVII:** This chapter comprises clauses for the recovery and collection of taxes. It also lists the interest rates charged on late payments or in cases where recovery has been made.

**Chapter XVIII:** It talks about the relief of income tax for the companies that will be paying dividends to their shareholders. included in Charitable works of companies through foundation wings are also included in this chapter.

**Chapter XIX:** This chapter is all about refunds in cases where more tax is paid to the IT department. It also includes the hows and whys of the correction of assessment of the refund of interest when no claim has been made despite individuals being liable for a refund. It has sections from 237 to 245.

**Chapter XIX A:** This chapter, specifically, deals with the settlement of cases from section 245 A to 245 L. It deals with all the aspects of the settlement.

**Chapter XIX B:** All the advance deals come under the jurisdiction of this chapter. It includes sections from 245 N to 245 V.

**Chapter XX:** This chapter deals with the appeals that are made to the commissioner and the deputy commissioner. It also includes the appeals made to the High Court, Supreme Court, and other advanced ruling powers after the revision of the commissioner.

**Chapter XX A:** This includes the sections from 269 A to 269 S. It is all about the acquisition of immovable properties in cases that counteract tax evasion. Every aspect of acquisition, including the jurisdiction, is also covered under this and the various sections that come under this chapter.

**Chapter XX B:** It lists down the mode of payment in those cases where evasion is required. It also deals with the accepting and taking of loans as well as deposits for the same along with their corresponding modes.



**Chapter XX C:** This chapter also deals with the immovable properties by the Central Government that need acquisition in any case of transfer. Restriction, authority, rectification, property vesting are a few of the topics that come under this chapter.

**Chapter XXI:** It includes Sections 271 to 275 that lists all penalties applicable to the various taxpayers under various conditions, including non-disclosure, failing to comply with the various provisions of the act, non-payment of taxes, and many others.

**Chapter XXII:** This chapter has Sections from 275 A to 280 D, which deals with the prosecution and offenses concerning the failure of compliance and other prosecution-related information on how it will go forward.

**Chapter XXIII:** Section 281 to 298 of the Income Tax Act comes under this chapter. Also, this chapter covers all the miscellaneous topics that cannot be put in the chapters of the tax mentioned above. It contains special as well as generic cases that may arise in situations related to the taxation process for the various entities of taxpayers.

### **Schedules of Income Tax Act 1961[8]**

Different annexures were added and amended under the schedule of the Income Tax Act. It was done to include the topics and scenarios which were not covered previously in the Act. A number of various schedules have been added to the Act at different periods of time to make the IT Act more comprehensive and inclusive.

## **2.3-FINANCE ACT:**

The Finance Act contains necessary amendments in the Direct taxes ( Income tax) and Indirect taxes ( GST, custom duties) signifying the policy decisions of the Union Government.

A Bill to give effect to the financial proposals of the Central Government for the financial

Computation and assessment of income are basically governed by the provisions of income tax Act but tax rates are not provided by the income tax Act and it is given by the Finance Act every year.

A Finance Act is the fiscal legislation enacted by the Indian Parliament to give effect to the financial proposals of the Central Government. It is enacted once a year and contains provisions relating to income taxes, customs, excise, Central and Integrated GST and other cess, exemptions, and reliefs. It may also contain provisions to amend other acts as the Government to effect its fiscal policy. The bill is usually termed the budget and it is introduced in Parliament by the Finance Minister.<sup>[21]<sup>21</sup></sup>

Finance Bill is a Money Bill, the government seeks to levy new taxes, make alterations in the current tax structure, or make proposals for the continuance of the present tax structure for a certain period beyond what was originally approved by the Parliament. The Parliament approves this bill for one fiscal year.

A finance bill aids in extracting promise of payment for such a transaction, that shows the indebtedness of the debtor to the creditor. It is not an outright contract but the terms are agreed beforehand with sufficient allowances and relaxations to the deal

The Finance Bill becomes the Finance Act on the assent by the President and it needs no notification, but is published in the gazette for general information. That's all to it.

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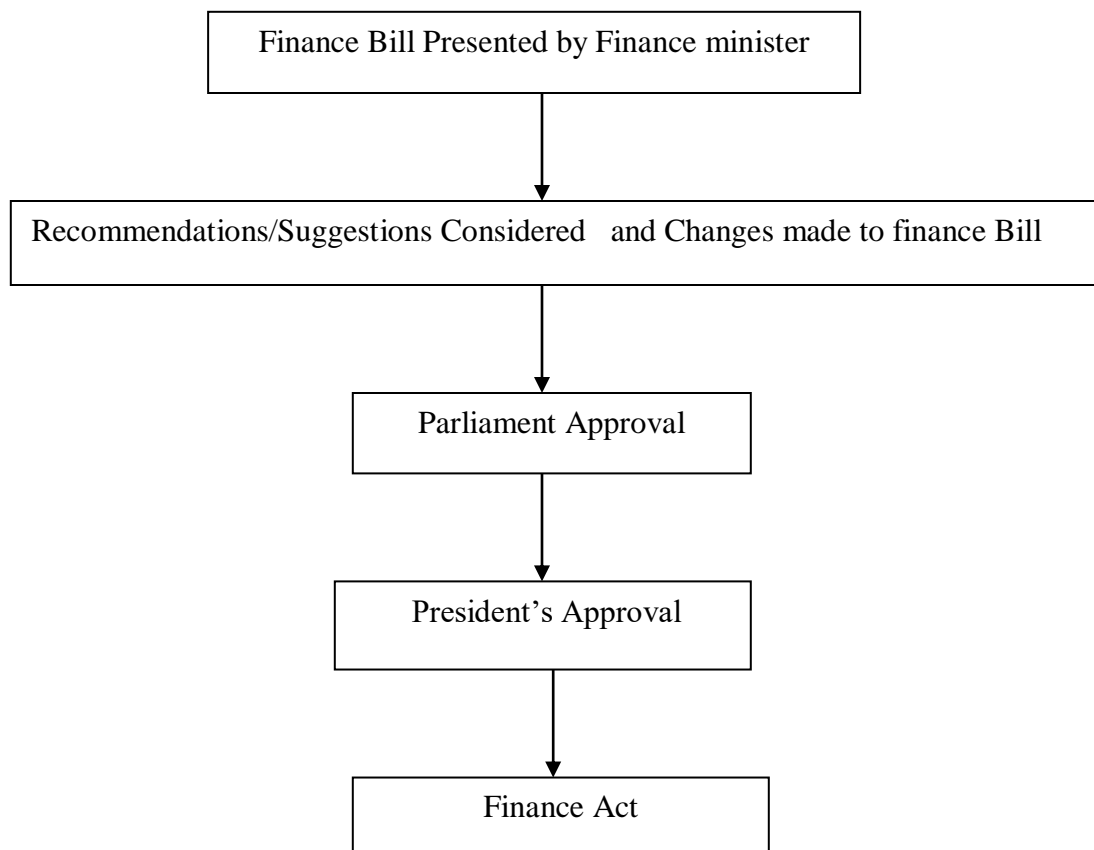
<sup>21</sup> ^ "India: The Finance Bill 2012 - Key Changes/Proposals". Mondaq. 14 November 2012. Retrieved 9 March 2013.

Notifications are issued if it is provided in the Act that any provision would come into effect from a date to be notified by the Government.

All legislative proposals have to be brought in the form of Bills before Parliament. A Bill is a statute in draft, and no Bill, whether it be introduced by the Government or a private member, can become law until it receives the approval of both the Houses of Parliament and assent of the President.

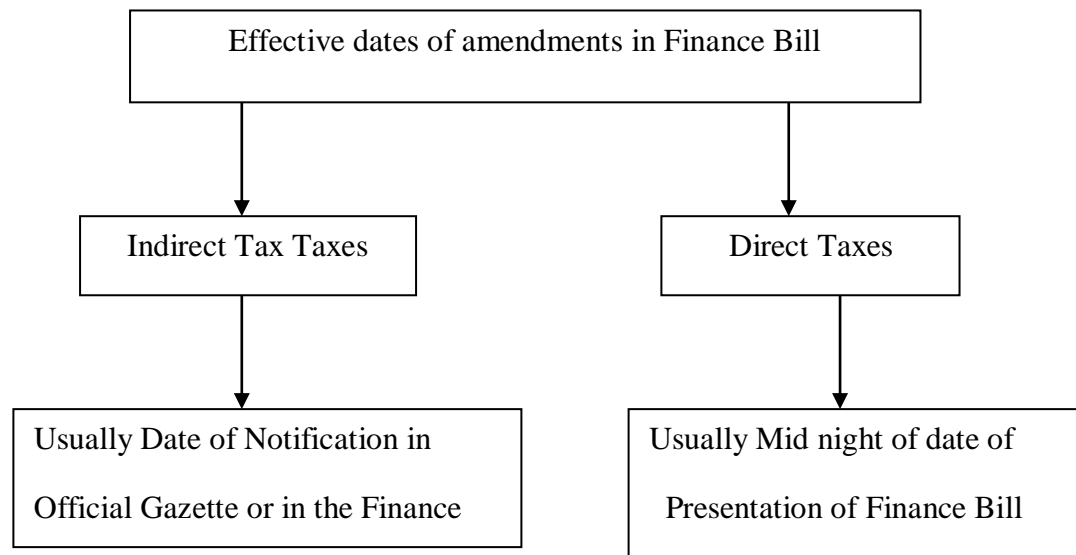
Finance Bill is presented usually in the month of February every year and this bill contains amendments in direct as well as indirect taxes. It is usually presented in the Parliament by the Finance Minister.

The finance bill is passed by both the houses of Parliament after it is being tabled and necessary recommendation/amendments have been made in it. Once this bill has been passed by the Parliament, it goes to the President for his assent. After President's assent, the finance bill becomes the Finance Act.



The above block diagram, I have shown how finance bill became a finance Act.

The effective date of applicability of provisions of the Finance Act is usually mentioned in the notification in the official gazette or in the Act itself. Generally, the amendments by the Finance Act are made applicable from the first day of the next financial year . most of the amendments by Finance Act, 2019 are effective from 1st April, 2019.



The First schedule to the annual Finance Act is divided into four parts:

Part I of the First Schedule to the Finance Act specifies the rates of income tax for respective. assesseees applicable for the current Assessment Year.

Part II specifies the rates at which tax is deductible at source for the current Financial Year.

Part III gives the rates for calculating income-tax for deducting tax from income chargeable under the head “Salaries” and computation of advance tax.

Part IV gives the rules for computing net agricultural income.

### **Important elements of Finance Act:**

All the elements included in the Finance Act associated with a particular Financial Year are of course important. Even so, there are particular elements that take precedence over the others.

The most important element is the rules laid down in the Act with respect to Income Tax Rates. Every year, the Act lays down in detail all the associated provisions related to Income Tax in the country. Since this applies to a large number of taxpayers, it is considered one of the most important elements.

The Finance Act is responsible for laying down the tax slabs that applies to taxpayers. The Act includes various details related to:

- Income through Salary
- Agricultural Income
- Tax slabs for Senior Citizens
- Tax slabs for Very Senior Citizens
- Income Tax Surcharges
- Taxes chargeable to companies
- Advance tax

These are a few important elements included and elaborated upon in detail in the Finance Act for a particular year.

### **FINANCE BILL, 2023 PROVISIONS RELATING TO DIRECT TAXES: [22]<sup>22</sup>**

The provisions of Finance Bill, 2023 (hereafter referred to as "the Bill"), relating to direct taxes seek to amend the Income-tax Act, 1961 (hereafter referred to as 'the Act'), to continue reforms in direct tax system through tax reliefs, removing difficulties faced by taxpayers and rationalization of various provisions.

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<sup>22</sup> <https://www.indiabudget.gov.in/doc/memo.pdf>

With a view to achieving the above, the various proposals for amendments are organized under the following heads:—

- (A) Rates of Income-tax;
- (B) Socio economic welfare measures;
- (C) Ease of compliance;
- (D) Widening and deepening of tax base/Anti-Avoidance;
- (E) Improving compliance and Tax administration;
- (F) Rationalisation of Provisions; and
- (G) Others.

### **DIRECT TAXES :**

The Finance Act for a particular financial year also includes the amendments that have been made with respect to Direct Taxes.

The Amendments made under various sections are noted down in this section of the Finance Act and each amendment of every section is noted down separately.

Also included in the Finance Act is the details of the insertion of new sections, if any.

#### **A. RATES OF INCOME-TAX:** [23]<sup>23</sup>

I. Rates of income-tax in respect of income liable to tax for the assessment year 2023-24. In respect of income of all categories of assessee liable to tax for the assessment year 2023-24, the rates of income-tax have either been specified in specific sections of the Act (like section 115BAA or section 115BAB for domestic companies, 115BAC for individual/HUF and 115BAD for cooperative societies) or have been specified in Part I of the First Schedule to the Bill. There is no change proposed in tax rates either in these specific sections or in the First Schedule. The rates provided in sections 115BAA or 115BAB or 115BAC or 115BAD of the Act for the assessment year 2023-24 would be

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<sup>23</sup> Income Tax Amendments by Finance Act, 2011". CA Club India. 9 May 2011. Retrieved 9 March 201year 2023-24

same as already enacted. Similarly, rates laid down in Part III of the First Schedule to the Finance Act, 2022, for the purposes of computation of “advance tax”, deduction of tax at source from “Salaries” and charging of tax payable in certain cases for the assessment would now become part I of the first schedule. Part III would now apply for the assessment year 2024-25.

Tax rates under section 115BAC— On satisfaction of certain conditions, as per the provisions of section 115BAC of the Act, an individual or HUF, from assessment year 2021-22 to assessment year 2023-24, has the option to pay tax in respect of the total income at following rates:

Total Income (Rs)	Rate
Up to 2,50,000	Nil
From 2,50,001 to 5,00,000	5%
From 5,00,001 to 7,50,000	10%
From 7,50,001 to 10,00,000	15%
From 10,00,001 to 12,50,000	20%
From 12,50,001 to 15,00,000	25%
Above 15,00,000	30%

**India’s Finance Act 2023:** [24]<sup>24</sup>

The Finance Act, 2023 has introduced various tax changes in India that can have significant implications for businesses operating in the country. As a result, it is important for companies and investors to carefully assess these changes before taking any actions. The Finance Act, 2023, has been notified by the Indian federal government and is now in effect from April 1, 2023.

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<sup>24</sup> Income Tax Amendments by Finance Act, 2011". CA Club India. 9 May 2011. Retrieved 9 March 2013.

The Finance Bill, 2023, was originally introduced during the Union Budget for the financial year (FY) 2023-24 on February 1, 2023, and has undergone significant changes through the notice of amendments in the lower house of the Indian Parliament, known as the Amendment Bill. These changes have been incorporated into the final version of the Finance Act, 2023.

Over 64 amendments have been passed under the Finance Act 2023, including alterations to the taxation of debt repayments from Business Trusts, advancing the date for charging withholding tax by online gaming operators, and incentivizing the International Financial Services Centre (IFSC).

Fresh changes have also been made, such as an increase in the tax rate for non-residents on royalty or fees for technical services (FTS) from 10 percent to 20 percent and the taxation of income from debt mutual funds.

These changes have implications for businesses operating in India and require careful consideration. Below, we provide a detailed analysis of the amendments

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These changes have implications for businesses operating in India and require careful consideration. Below, we provide a detailed analysis of the amendments.

Key changes introduced in India's Finance Act, 2023

Taxation of income from royalty and fees for technical services in the hands of non-residents

Taxation of income from royalty and FTS in the hands of non-residents is subject to certain rules and regulations. Here are the key points to keep in mind:

Non-residents are only taxed on their income that is sourced from India. Income in the nature



of royalty or FTS is considered to have arisen in India and is therefore taxable in the hands of non-residents in India.

Section 115A of the Income-tax Act outlines the tax rate at which different streams of income are taxable in the hands of non-residents. The rate for royalty and FTS income was reduced from 25 percent to 10 percent by the Finance Act of 2015.

The changes introduced by the Finance Act 2023 to the taxation of income from royalties and FTS in the hands of non-residents are as follows:

Increase in tax rate from 10 percent to 20 percent for royalty and FTS income earned by non-residents.

Non-residents can choose to be taxed as per the provisions of a tax treaty entered into between India and the country of residence of the taxpayer or the Income-tax Act , whichever is more beneficial.

A non-resident is required to furnish a valid tax residency certificate (TRC) issued by the government of its country of residence to claim benefits under a tax treaty.

Tax treaties provide for lower tax rates for royalty and FTS provided that the recipient is the beneficial owner of such income.

Circular 789 issued by the CBDT clarifies that a TRC will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the provisions of a tax treaty.

In the case of non-residents where the tax treaty provides for a rate higher than 10 percent or in case India does not have a tax treaty with the jurisdiction of the non-resident, the change may result in an additional tax burden.

Withholding on royalty and FTS payments to non-residents may be made at a lower rate as per the applicable tax treaty, therefore, non-residents may no longer be exempt from filing an income-tax return.

Non-residents may have to obtain a PAN in India to comply with the increased compliance burden. Top of form taxation of business trust

From April 1, 2023, Business Trusts will be taxed on distributions made in the form of debt repayment or proceeds from amortization of debt as income from other sources.

Previously, unit holders of Business Trusts were not taxed on such capital payments, but now they will have to pay tax at a rate of 40 percent (for non-residents) or applicable slab rates (for residents).

This amendment introduced through Finance Act 2023 has nullified the benefit provided to sovereign wealth funds (SWFs) and pension funds (PFs) under section 10(23FE) of the Income-tax Act, 1961 to the extent distributions made to SWFs and PFs were in the nature of debt repayments from Business Trusts.

The Finance Act 2023 has introduced the following changes to the taxation of Business Trusts.

Taxable income to be determined on the basis of specified sum

The taxable income of unit holders will now be determined based on the “specified sum” received during the previous year for the unit held at any time during that year.

The specified sum can be calculated using a formula:  $A-B-C$ . If the result of the formula is negative, then the specified sum will be considered zero.

Here’s what each variable in the formula represents:

A: This refers to the total amount of distributions made by the Business Trust to the unit holder during the previous year or earlier, excluding those in the form of interest or dividend specified in Section 10(23FC) or 10(23FCA) and those taxable at the level of the Business Trust under section 115UA. If the result of the formula is negative, the specified sum will be deemed to be zero.

B: This represents the issuance price of the unit of Business Trust. The Finance Act, 2023 now allows for the reduction of this amount while computing the specified sum. This means that as long as the Business Trust does not distribute an amount, other than interest

or dividend, that exceeds the issuance price of units, there will be no tax implications for unit holders. As a result, specified sum will be considered zero until such a distribution occurs.

C: This refers to the amount that has already been taxed under Section 56(2)(xii) of the Income-tax Act in any previous year.

The amendment is viewed as a positive development for unit holders, as it provides some relief, particularly through the reduction of the amount subject to tax under Section 56(2)(xii) when calculating the specified sum.

However, since Business Trust units are publicly traded, the tax implications may vary for different unit holders at different times.

To assist unit holders in determining their tax liability, Business Trusts may need to make appropriate disclosures, and Form 64C may need to be revised accordingly.

It is worth noting that the implications under Section 56(2)(xii) are only likely to arise when the distributions in the form of debt repayments exceed the issuance price of the Business Trust units.

#### Exemption to SWFs/ PFs

The Income-tax Act provides an exemption to specified SWFs and PFs from paying tax on their dividends, interest, or long-term capital gains (LTCG) earned from investments in Infrastructure Investment Trusts (InvITs), subject to certain conditions.

The Finance Act 2023 has now extended this exemption to also include the specified sum mentioned in section 56(2)(xii) of the Income-tax Act.

As a result, any distributions made in the form of a specified sum to SWFs or PFs should also be exempt from tax, provided that they fulfil the necessary conditions under Section 10(23FE). This is a positive development that should address the concerns of SWFs and PFs investing in InvITs.

#### Computation of cost of acquisition

The Finance Act 2023 outlines that the cost of acquisition of a unit of Business Trust should be decreased by any amount received by a unit holder from the Trust that does not fall under the category of interest or dividend as mentioned in section 10(23FC) or 10(23FCA) of the Income-tax Act, and is not taxable under Sections 56(2)(xii) or 115UA(2) of the Income-tax Act. The effect of this change is explained below.

#### Exemption from withholding on interest payments

The Finance Act 2023 amends Section 193 of the Income-tax Act to remove the obligation for Indian companies to withhold tax on interest payments made to Business Trusts that hold controlling interest or interest as per specific regulations.

Earlier, Section 194A1 of the Income-tax Act exempted Business Trusts from tax withholding on interest payments, except for interest on securities like debentures.

This amendment may provide welcome relief to Business Trusts holding controlling interest or interest under specific regulations, by removing the requirement for tax withholding on interest payments.

#### Measures to incentivize the growth of the IFSC

To encourage the growth of the IFSC, the Finance Act 2023 proposes the following measures:

Amending the definition of ‘original fund’ to facilitate the tax-neutral relocation of offshore funds wholly owned and controlled by Abu Dhabi Investment Authority and the Government of Dubai to the IFSC.

Exempting Alternative Investment Funds (AIFs) established in the IFSC from the angel tax on shares issued by unlisted Indian companies.

Providing further incentives for aircraft leasing in IFSC, such as exempting capital gains from the transfer of equity shares of a domestic company and increasing the dividend income of units of IFSC engaged primarily in the business of aircraft leasing.

Extending the tax holiday for Offshore Banking Units (OBUs) in IFSC to 100 percent for the assessment year commencing on April 1, 2023.

Lowering the tax rate on dividend distributions by IFSC units to 10 percent (instead of the 20 percent rate applicable on dividends received by an Indian company not based in IFSC). The change is likely to incentivize investments from non-residents in the IFSC.

Offering a concessional rate of withholding tax on interest income earned by non-residents from long-term or rupee-denominated bonds listed on IFSC stock exchanges.

### **Taxation of debt mutual funds:**

According to the new provision introduced by the Finance Act 2023, capital gains resulting from the transfer of units of a 'specified mutual fund' acquired on or after April 1, 2023, will be deemed short-term capital gains. The term 'specified mutual fund' refers to a mutual fund that invests no more than 35 percent of its total proceeds in equity shares of domestic companies.

The capital gains will be calculated by reducing the cost of acquisition and expenses incurred in connection with a transfer or redemption at maturity. This amendment eliminates the benefit of indexation of the cost of acquisition while computing capital gains on transfers of units of specified mutual funds, resulting in such capital gains being taxable at the applicable slab rates for resident investors.[25]<sup>25</sup>

The impact of this change is likely to be felt not only by debt funds but also by other categories of funds, such as ETFs, funds of funds, international funds, and gold funds.

### **Taxation of online gaming**

The Finance Bill 2023 had earlier proposed a new tax regime for taxing winnings from online games, with withholding tax provisions to take effect on July 1, 2023.

However, the Amendment Bill 2023 moved the date for the withholding tax provision up to April 1, 2023, and it was enforced through the Finance Act 2023.

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<sup>25</sup> "Income Tax Amendments by Finance Act, 2011". CA Club India. 9 May 2011. Retrieved 9 March 2013

Starting April 1, this year – 30 percent tax deducted at source will apply to withdrawals of net winnings.

At present, the Finance Ministry has not provided rules on how to compute ‘net winnings’. It is important to note that the requirement to withhold tax at a higher rate, as provided in Section 206AB(3), will not apply to withholding tax on winnings from online games.

**Securities transaction tax (STT):**

The STT on the sale of options has been increased to INR 2,100 on a turnover of INR 10 million against an earlier levy of INR 1,700, an increase of 23.5 percent, while on the sale of futures contracts, the STT has been raised to INR 12,500 on a turnover of INR 10 million against INR 10,000 earlier, indicating a 25 percent hike.

## **2.4-CENTRAL BOARD OF DIRECT TAX ( C.B.D.T):**

The role of Central Board of Direct Tax is very important in the collection of direct tax and resolve the dispute between tax payer and tax department.

CBDT means Central Board of Direct Taxes. It is a statutory authority that is working under the Central Board of Revenue Act, 1963. The authorities of the Board work as a Division of the Ministry managing matters connecting with duty and the collection of direct taxes

- The CBDT is empowered to make rules for carrying out the purposes of the Act.
- For the proper administration of the Income-tax Act, 1961, the CBDT frames rules from time to time. These rules are collectively called Income-tax Rules, 1962.
- It is important to keep in mind that along with the Income-tax Act, 1961, these rules should also be studied.

The Central Board of Revenue is the highest body of the Department which came into existence as the outcome of the Central Board of Revenue Act, of 1924. It is charged with the administration of taxes. The Board was in charge of both direct taxes and indirect taxes. However, when the board has many more workloads for the administration of taxes then it may be divided into two parts which is namely, the central board of direct taxes and the central board of Excise and Customs which was the effect on 01-01-1964. According to section 3 of the Central Board of Revenue Act, 1973, this divarication of two boards is brought about by the Constitution.

The CBDT is a part of Department of Revenue in the Ministry of Finance. On one hand, CBDT provides essential inputs for policy and planning of direct taxes in India, at the same time it is also responsible for administration of direct tax laws through the Income Tax Department. The Central Board of Direct Taxes is a statutory authority functioning under the Central Board of Revenue Act, 1963. The officials of the Board in their ex-officio capacity also function as a Division of the Ministry dealing with matters relating to levy and collection of direct taxes.

The Central Board of Revenue as the Department apex body charged with the administration of taxes came into existence as a result of the Central Board of Revenue Act, 1924. Initially the Board was in charge of both direct and indirect taxes. However,

when the administration of taxes became too unwieldy for one Board to handle, the Board was split up into two, namely the Central Board of Direct Taxes and Central Board of Excise and Customs with effect from 1.1.1964. This bifurcation was brought about by constitution of the two Boards u/s 3 of the Central Boards of Revenue Act, 1963.

### **Organizational Structure of the Central Board of Direct Taxes: [26]<sup>26</sup>**

The CBDT is headed by Chairman and also comprises of six members, all of whom are ex-officio Special Secretary to Government of India.

1. Chairman
2. Member of income Tax & Revenue
3. Legislative member
4. Administrative member
5. Member for investigation
6. Member of TPS & system management
7. Audit & Judicial member

All members are selected from the Indian Revenue Services. These members are constituted by the top members of the Income Tax Department.

### **Functions of CBDT: [27]<sup>27</sup>**

There are many functions of CBDT. But some functions of CBDT are given the following:

- A-The Main Function Of CBDT Is To Deal With Matters Related To Levying And Collecting Direct Taxes.
- B-The Important Function Of CBDT Is To Formulate The Various Policies.
- C-The Function Of CBDT Is To Supervision Of The Entire Income Tax Department
- D-It Suggests Legislative Changes For The Enactment Of Direct Tax
- E-It Additionally Recommends Changes In Charge Rates.

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<sup>26</sup> <https://www.incometaxindiagov.in>

<sup>27</sup> [https://www.taxmanagementindia.com/visitor/detail\\_article.asp?ArticleID=981](https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=981)



F-The Main Propose Of CBDT Is To Change The Taxation Structure In Line With The Government Policies.

**Responsibilities of Chairman and Members, Central Board of Direct:**

Various functions and responsibilities of CBDT are distributed amongst Chairman and six Members, with only fundamental issues reserved for collective decision by CBDT. In addition, the Chairman and every Member of CBDT are responsible for exercising supervisory control over definite areas of field offices of Income Tax Department, known as Zones.

**Areas for Collective Decision By CBDT :**

Policy regarding discharge of statutory functions of the CBDT and of the Union Government under the various direct tax laws.

**General Policy relating to:**

- 1-Set up and structure of Income Tax Department;
- 2-Methods and procedures of work of the CBDT;
- 3-Measures for disposal of assessments, collection of taxes, prevention and detection of tax evasion and tax avoidance;
- 4-Recruitment, training and all other matters relating to service conditions and career - prospects of all personnel of the Income-tax Department;
- 5-Laying down of targets and fixing of priorities for disposal of assessments and collection of taxes and other related matters;
- 6-Write off of tax demand exceeding Rs.25 lakhs in each case;
- 7-Policy regarding grant of rewards and appreciation certificates.

Any other matter, which the Chairman or any Member of the Board, with the approval of the Chairman, may refer for joint consideration of the Board. Some of his important functions are:-

### **A. Administrative functions:**

- 1-Supervision and control over the work of the different Directorates of Income Tax (Vigilance).
- 2-Vigilance clearance for Group 'A' Officers.
- 3-In respect of Group 'A' level officers, finalisation of the Agreed List, the list of officers of doubtful integrity and the list of officers whose work would be subjected to vigilance inspection.
- 4-Maintenance of CVO's registers for Group 'A' officers.
- 5-Preparation and furnishing of reports to CBDT/CVC/Ministries.
- 6-Framing of norms and issuing guidelines for vigilance functions of the Department.
- 7-Drawing up the annual action plan for vigilance work for various functionaries of the department including DGIT (Vig.) himself, DITs (Vig.), CCITs and DGITs.

### **B. Technical functions:**

1. Dealing with complaints.
2. Vigilance Inspection.
3. Action on self-contained report.
4. Disciplinary proceedings.
5. Actions in respect of cases processed/investigated by the CBI.
6. References to CVC.
7. References to UPSC.
8. References to DOP&T/Ministry of Law/Other Departments.
9. Scrutiny of immovable property returns.
10. Coordination with CBI and CVC in respect of complaints against officers of the department.

### **C. Miscellaneous:**

1. DGIT (Vigilance) acts as cadre controlling authority in respect of Group 'B' officers as also the staff allocated to the regional directorates and DGIT (Vigilance).

2. He will handle the vigilance and disciplinary matters of the gazetted officers working under his administrative control.
3. He will initiate the confidential reports of the DITs working in his charge in addition to officers working directly under him.
4. He will review the confidential reports of the officers in the Directorate written by the Director of Income Tax. He will obtain reports from the Directors of Income-tax concerned and take further necessary action including communication of adverse remarks. The headquarters office of the DGIT (Vigilance) would deal with the representations against adverse remarks and submit the relevant file to the DGIT (Vigilance) through the DIT concerned. The latter will forward two copies of the duly completed annual confidential reports of all the officers working under him to the DGIT (Vigilance) who, after keeping one copy for his record, will pass on the other copy to the Board.
5. DGIT (Vigilance) shall coordinate the activities and streamline the working of the different directorates functioning under his control.

### **Composition and functions of Directorate of Income Tax (Vigilance):**

The Director of Income-tax (Vigilance) is an officer of the level of Commissioner of Income-tax. He is assisted by a number of Addl./Joint CITs, at the headquarters, having broadly territorial distribution of work. At present, there are four regional directorates of income-tax (Vigilance) viz. North, West, East and South with their headquarters at Delhi, Mumbai, Kolkata and Chennai respectively.

The detailed functions of the Directorate of Income-tax (Vigilance) are given in the Chapter on “Vigilance” of this Manual and a separate “Manual on Vigilance”. However, the main functions of the Directorate are as under:-

### **Revised instruction for constitution of Local Committees to deal with taxpayers by the CBDT:**

The Central Board of Taxes provided for the constitution of ‘Local committees’ to deal with taxpayers’ grievances arising from High-Pitched Scrutiny assessment. As indicated

by section 119 of the Income- Tax Act,1961 CBDT issues the instructions to power and functions of local Committees to deal with Taxpayers.

### **Constitution of Local Committees: [28]<sup>28</sup>**

- Local Committees Consist Of 3 Members Of Pr. CIT/CIT Rank. To Have A Viewpoint Of The Process Engaged With The Faceless Assessment Process, Local Committees So Comprised In Every Pr. CCIT Region And Pr.CCIT(Exemption) Shall Have The One Region Of Pr. CIT.
- The Other Member May Be Selected From The Pool Of Officers Posted As Pr.CsIT/Pr.CIT(Central)/CIT (Judicially)/CIT(Audit)/CsIT (DR), ITAT Of The Respective Region.
- The Senior-Most Member Would Be Designated As The Chairperson Of The Committee.
- The Additional CIT (Headquarters) To Such Pr. CCIT Would Act As A Member Of The Secretary To The Local Committee.

### **Jurisdiction of Local Committee:**

- The Local Committees were constituted to deal with the grievance petitions of Assesses under the jurisdiction of Pr.CCIT for High-Pitched scrutiny Assessments completed under both faceless and non- faceless assessment regimes. These committees constituted in Pr.CCIT region will also handle the changes in central which are under territorial jurisdiction.

### **Functions of Local Authority:**

- The Pr. CCIT Shall Review The Work Of The Local Committee On A Monthly Basis. It Shall Also Highlight The Outcome Of The Work Of Local Committees Along With The Action Taken On The Suggestions Made By The Local Authority.

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<sup>28</sup> <https://www.tax4india.com>

- The Local Committees Shall Be Furnished The Quarterly Report By The Pr.CCIT Is Concerned With The Other Members Of IT&R And CDBT.
- The Main Function Of The Local Committees Is To Effectively And Efficiently Deal With The Grievances Of Taxpayers And It Also Helps For Supporting An Environment Where Assessment Orders Are Passed In A Fair And Sensible Way.
- It Is Emphasized To The Constitution Of Local Committees Shall Be Finalized Within 15 Days Of The Issue Of This Instruction.

**The action was taken by the Local Committees regarding the Grievance Petition:**

- The Local Committee Would Be Acknowledged When He Received The Grievance Petition. Member Of The Secretary Would Be Maintained A Separate Record Of The Grievance Petitions.
- Member-Secretary Forwards The Receipt Of Taxpayers' Grievance Of High-Pitched Assessment To The Chairman And The Local Committee Members Within 3 Days Of Receipt Of The Grievance.
- The Local Committee May Call For The Relevant Assessment Records To Peruse From The Jurisdiction Which Is Concerned By The Pr.CCIT.
- Member-Secretary Will Ensure The Meetings Are Held At Least Twice Every Month During The Pendency Of The Grievance Petition With The Local Authority. And The Report Will Submit To The Pr. CCIT Is Concerned.

It concluded that is a statutory authority that is working under the Central Board of Revenue Act, 1963. The officials of the Board function as a Division of the Ministry dealing with matters relating to levy and collection of direct taxes. It is charged with the administration of taxes. The Board was in charge of both direct taxes and indirect taxes. However, when the board has many more workloads for the administration of taxes then it may divide into two parts which is namely, the central board of direct expenses and the central board of Excise and Customs.

e-Start India is one of the leading online legal services platforms for services relating to Income Tax Filing Online, offering a variety of Tax filing services like Income Tax Filing Online, PF, and TDS.

**CHAPTER-3-----(97-125)**

**3.1- BASIC RULES AND REGULATION ON DIRECT TAX**

**3.2-IMPORTANT PROVISIONS INCLUDED IN DIRECT  
TAX LAW**

### **3.1-BASIC RULES AND REGULATIONS ON**

#### **DIRECT TAX:**

Here I have described of the income tax rules and regulation which are to be used fill the income tax return form. Act is a primary legislation whereas rule is a secondary legislation.

Very often the term Acts, Rules and Regulations are confused as being one and the same. But these terms hold distinct meaning albeit have a connection to each other. The constitution of India under article 13 (3) (a) says law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.

#### **INCOME TAX RULES:**

As mentioned earlier, an act contains a broad structure of law. But for the law to be all rounded and fulfilling in all the intricate matters is a difficult task. This is where 'Rules' are important.

Rules are the prescribed guidelines for the proper conduct and can be adjusted accordingly. It is not always necessary that the act shall contain every minute details of the subject matter, if done so the act would end up in lengthy and tedious. Thereby rules are made to supplement the act.

The power to make rules comes from a particular section in the act itself. As given in the article 13 (3)(a) of the constitution, these rules shall be deemed to have the effect of law. They provide the procedural aspect of the laws and can never contradict the act albeit can be altered. In case of any conflict between the act and the rules, the provisions of the act will prevail.

For Example:

1. The Companies act, 2013 u/s 469 empowers the central government to make rules for carrying out the provisions of this Act. There are various rules under the companies



act relating to aspects of incorporation, dividend, directors, auditors etc. These rules are notified by the ministry of corporate affairs from time to time.

Note: The term in the act “as may be prescribed” indicates the rules which may be enacted according to the act. It is important to note that the act is made by the legislation whereas the rules are provided by the executive. The two pillars of the democracy work together for the better enforcement of the laws in the nation.

1. The Industrial Employment (Standing Orders) act, 1946 u/s 15 empowers the appropriate government to make rules to carry out the provisions of the act. Therefore the Industrial Employment (Standing Orders) Central Rules are made by the central government to give proper enforcement to the act.
2. The Foreign Exchange Management Act, 1999 (FEMA) an act to consolidate and amend the laws relating to foreign exchange. This act contains provisions u/s 46 the power to make rules. This provision gives the central government the power to make rules to carry out the provisions of the act.

**Here we focuses on the three terms- Laws, Rules and Regulations and their distinction to each other:**

In a democratic country, the work of making or drafting a law is that of legislature. The legislature has the authority to make laws for a political entity like a country. An act is a law which is passed by the law. For an act to be called as a law has to go through a lot of procedure.

Firstly, a draft is proposed in the parliament which is called a bill. This bill can be proposed by any member of parliament or by the government itself. If the bill passes through both the houses of parliament Rajya Sabha and the Lok Sabha with the majority of votes required it then has to receive the accent of the President.

When the president gives his accent the bill finally becomes an act. This process of arranging, collecting, restating and writing down of law on a particular subject matter in a

structured manner is called codification of laws. This act consists of definitions, scope of its applicability, various provisions, fines, punishments and remedies.

The act contains a broad structure of law to be implemented on a particular subject matter and can be enacted by both the central and state legislatures.

For Example;

1. The companies act, 2013. The matters relating to companies from its formation to dissolution are covered under the blanket of the companies act.
2. The Indian Contract Act, 1872 prescribes the law relating to relating to contracts in India.

### **ABOUT THE INCOME TAX REGULATIONS:[29]<sup>29</sup>**

Regulations are made through delegate legislation. It is when the executive authority is given powers by a legislation to make laws in order to implement and administer the requirement of that legislation. These are also called subordinate legislation. Regulations are passed for the proper implementation of the act.

There are regulatory bodies created for implementing regulations. SEBI, RBI, IRDA etc. are some regulatory authorities.

1. Under the FEMA act, 1999 as mentioned before rules are made by the central government u/s 46. Likewise, the act also provides provisions u/s 47 to make regulations and such regulation making power is given to the Reserve Bank of India.
2. SEBI Issue of Capital and Disclosure Requirements (ICDR) Regulations 2018 was made by SEBI by the power conferred to it u/s 30 of the SEBI Act, 1992.
3. The Protection of Human Rights Act, 1993 was enacted by the legislature and the regulation making power is contained with the NHRC i.e. the national human rights commission u/s 10(2) of the act.

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<sup>29</sup> <https://incometaxindia.gov.in/pages/tax-laws-rules>

The three terms Act, Rules and Regulations have an interwoven relationship. The act- is the main source from which rules and regulations derive their power. Acts are embodiment of laws on a particular matter whereas rules provide a complimentary source of guidelines for proper conduct. Regulations are laid down by statutory/ executive bodies and are deemed as standard laws which ought to be followed.

**DIRECT TAX VIVAD SE VISHWAS RULES, 2020** [30]<sup>30</sup>  
(NOTIFICATION NO. S.O. 1129(E), DATED 18-3-202)

**Short title and commencement.**

1. (1) These rules may be called the Direct Tax Vivad se Vishwas Rules, 2020.

(2) They shall come into force on the date of their notification in the Official Gazette.

**Definitions.**

(3) In these rules, unless the context otherwise requires,—

"Act" means the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020);

"dispute" means appeal, writ or special leave petition filed or appeal or special leave petition to be filed by the declarant or the income-tax authority before the Appellate Forum, or arbitration, conciliation or mediation initiated or given notice thereof, or objections filed or to be filed before the Dispute Resolution Panel under section 144C of the Income-tax Act, or application filed under section 264 of the Income-tax Act;

A- 'Act' means the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020);

B- 'dispute' means appeal, writ or special leave petition filed or appeal or special leave petition to be filed by the declarant or the income-tax authority before the Appellate Forum, or arbitration, conciliation or mediation initiated or given notice thereof, or objections filed or to be filed before the Dispute Resolution Panel under section 144C of the Income-tax Act, or application filed under section 264 of the Income-tax Act;

C- eligible search cases" means cases in which an assessment has been made under sub-section (3) of section 143 or section 144 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act and the amount of disputed tax does not exceeds five crore rupees;

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<sup>30</sup> <https://neerajbhagat.com/blog/index.php/tax-law-of-india-direct-and-indirect-tax-laws/>

D- 'Form' means the Forms appended to these rules;

E-issues covered in favor of the 'declarant' means issues in respect of which an appeal or writ or special leave petition is filed or appeal or special leave petition is to be filed by the income-tax authority before the appellate forum

F- 'section' means section of the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020);

G -The words and expressions used in these rules and not defined but defined in the Act or Income-tax Act,1961 shall have the same meanings respectively as assigned to them in those Acts.

### **Form of declaration and undertaking:**

3. (1) The declaration under sub-section (1) of section 4 shall be made in Form 1 to the designated authority.

(2) The undertaking referred to in sub-section (5) of section 4 shall be furnished in Form 2 along with the declaration.

(3) The declaration under sub-rule (1) and the undertaking under sub-rule (2), as the case may be, shall be signed and verified by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961.

(4) The designated authority on receipt of declaration shall issue a receipt electronically in acknowledgement thereof.

### **Form of certificate by designated authority:[31]**<sup>31</sup>

4. The designated authority shall grant a certificate electronically referred to in sub-section (1) of section 5 in Form 3.

### **Intimation of payment.**

5. The detail of payments made pursuant to the certificate issued by the designated authority shall be furnished along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, arbitration, conciliation, mediation or claim filed by the declarant to the designated authority in Form 4.

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<sup>31</sup> <https://www.axguru.in> › corporate-law › objective-implication

**Manner of furnishing:**

6. The Form 1 and Form 2 referred to in rule 3 and Form 4 referred to in rule 5 shall be furnished electronically under digital signature, if the return of income is required to be furnished under digital signature or, in other cases through electronic verification code.

Explanation.—For the purpose of this rule, "electronic verification code" shall have the same meaning as referred to in rule 12 of the Income-tax Rules, 1962.

**Order by designated authority:**

7. The order by the designated authority under sub-section (2) of section 5, in respect of payment of amount payable by the declarant as per certificate granted under sub-section (1) of section 5, shall be in Form 5.

**Laying down of procedure, formats and standards:**

8. The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for furnishing and verifying the declaration in Form 1 under sub-rule (1) of rule 3, furnishing and verifying the undertaking in Form 2 under sub-rule (2) of rule 3, granting of certificate in Form 3 under rule 4, intimation of payment and proof of withdrawal in Form 4 under rule 5 and issuance of order in Form 5 under rule 7 and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the said declaration, undertaking, certificate, intimation and order.

**Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced:**

9. (1) Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, the declarant shall have an option to—

(2) Where the declarant exercises the option as per clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a

consequence of carrying forward the reduced amount of loss or unabsorbed depreciation in subsequent years:

**Provided** that the written down value of the block of asset on the last day of the year, in respect of which unabsorbed depreciation has been reduced, shall not be increased by the amount of reduction in unabsorbed depreciation:

**Provided further** that in cases other than the eligible search cases, in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant:

**Provided also** that in case of eligible search cases, in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one and one-fourth times of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction and where the one and one-fourth times of the amount by which loss or unabsorbed depreciation is reduced exceeds the amount of loss to be carried forward before it's reduction, such excess shall be ignored:

**Provided also** that in case of eligible search cases in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), five-eighth of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.

**Manner of computing disputed tax in cases where Minimum Alternate Tax (MAT) credit is reduced.**

**10.** (1) Where the dispute in relation to an assessment year relates to reduction in Minimum Alternate Tax (MAT) credit to be carried forward, the declarant shall have an option to

I-include the amount by which MAT credit to be carried forward is reduced in disputed tax and carry forward the MAT credit by ignoring such amount of reduction, or

II-carry forward the reduced MAT credit

(2) Where the declarant exercises the option as per clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward reduced MAT credit in subsequent years:

**Provided** that in cases other than the eligible search cases, in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which MAT credit is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant:

**Provided further** that in case of eligible search cases, in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), one and one-fourth times of the amount by which MAT credit is reduced shall be considered for reduction and where the one and one-fourth times the amount by which MAT credit is reduced exceeds the amount of MAT credit to be carried forward before its reduction, such excess shall be ignored:

**Provided also** that in case of eligible search cases in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), five-eighth of the amount by which MAT credit is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.

Explanation.—For the purpose of this rule MAT credit means tax credit as per the provisions of section 115JAA or 115JD of the Income-tax Act.

**Manner of computing disputed tax in certain cases:**[32]<sup>32</sup>

**11.** (1) Where the dispute includes issues covered in favour of declarant, the disputed tax in respect of such issues shall be the amount, which bears to tax, including surcharge and cess, payable on all the issues in dispute, the same proportion as the disputed income in relation to issues covered in favour of declarant bear to the disputed income in relation to all the issues in dispute.

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<sup>32</sup> <https://www.caclubindia.com/forum/difference-between-notification-circular87405.asp>

## **Employees welfare Fund:**

### **Requirements for approval of a fund under section 10(23AAA).**

**16C.** (1) The fund shall be formed under a trust and it shall be evidenced by a trust deed

(2) The contributions to the fund are to be made by the employees by way of periodical subscription.

(3) The application for approval of any fund under clause (23AAA) of section 10 shall be made in Form No. 9 to the Commissioner having jurisdiction over the area or territory in which the accounts are kept and such application shall be accompanied by the documents mentioned therein.

(4) Where the Commissioner is satisfied that all the conditions laid down in clause (23AAA) of section 10 are fulfilled in the case of the fund, he shall record such satisfaction in writing and grant approval to the fund specifying the assessment year or years for which the approval is valid so however that such approval shall, at one time, have effect for such assessment year or years not exceeding three assessment years.

(5) Where the Commissioner is satisfied that one or more of the conditions laid down in clause (23AAA) of section 10 are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :

**Provided** that no order of rejection of an application shall be passed without giving an opportunity of being heard.]

## **Gratuity Fund :**

### **Initial contributions.**

**104.** The amount to be allowed as a deduction on account of an initial contribution which an employer may make in respect of the past services of an employee admitted to the benefits of a fund shall not exceed  $8\frac{1}{3}$  per cent of the employee's salary for each year of his past service with the employer.

## **PART VIII**

### **REFUNDS**

#### **Refund claim.**



**41.** (1) A claim for refund under Chapter XIX <sup>1</sup>[(*other than under section 239A*)] shall be made in Form No. 30.

(2) The claim under sub-rule (1) shall be accompanied by a return in the form prescribed under section 139 unless the claimant has already made such a return to the Assessing Officer.

(3) Where any part of the total income of a person making a claim for refund of tax consists of dividends or any other income from which tax has been deducted under the provisions of sections 192 to 194 [, section 194A and section 195], the claim shall be accompanied by the certificates prescribed under section 203.

(4) The claim under sub-rule (1) may be presented by the claimant in person or through a duly authorised agent or may be sent by post.

**Tax Recovery Officer to exercise or perform certain powers and functions of an Assessing Officer.**

**117C.** (1) The Chief Commissioner or the Commissioner, by general or special order in writing, may authorise a Tax Recovery Officer to exercise or perform the powers and functions conferred on or assigned to an Assessing Officer under section 154 for rectifying any mistake apparent from record in respect of an order passed by the Assessing Officer consequent to which a sum is payable and the Tax Recovery Officer has drawn a Certificate under section 222 in respect of such sum.

(2) The Tax Recovery Officer shall exercise or perform such powers and functions concurrently with the Assessing Officer.]

**Estimate of advance tax:**[33]<sup>33</sup>

[**39.** The intimation which an assessee has to send to the Assessing Officer under sub-section (5) of section 210 shall be in Form No. 28A.]

**Notice of demand.**

**38.** Notwithstanding anything contained in rule 15, the notice of demand under section 156 to be served upon the assessee in pursuance of an order under section 210 shall be in Form No. 28.

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<sup>33</sup> he Industrial Employment (Standing Orders) Act, 1946, Sec .15

**Deduction u/s 80C:**

**[Guidelines for approval [under clause (xix) of sub-section (2) of section 80C or] under clause (xvi) of sub-section (2) of section 88.**

**20.** The Board, before granting approval to a public company, [under clause (xix) of sub-section (2) of section 80C or] under clause (xvi) of sub-section (2) of section 88, shall satisfy itself that the application made to it fulfils the following requirements, namely :—

1-An application for approval has been made in the Form No. 59 by the public company three months before the [eligible issue of capital].

2-[*Explanation.*—For the purposes of this rule, "the eligible issue of capital" means an issue referred to in clause (i) of the *Explanation* to clause (xix) in sub-section (2) of section 80C or in clause (i) of the *Explanation* to clause (xvi) in sub-section (2) of section 88.]

3-Every application shall be accompanied by the following documents, namely :—

a - copy of the certificate of incorporation under the Companies Act, 1956 (1 of 1956);  
audited balance sheets and profit and loss account for three previous years immediately preceding the previous year in which the application is made.

**Provided** that where a company has been in existence for a period of less than three years, in that case that company may furnish balance sheet and profit and loss account for the period of its existence.

4-Every such public company shall invest its total paid-up capital (hereinafter referred to as such capital) raised through equity issue or debentures in the following manner :—

(i) twenty-five per cent or more of such capital shall be invested in the infrastructure facility before the end of one year from the date of approval of the Board;

(ii) the balance of such capital shall be invested within a period of three years from the date of approval

(5) Every such public company shall submit a certificate from an accountant, as defined in the Explanation in sub-section (2) of section 288, specifying the amount invested in each year, from the date of approval of the Board.

(6) The Board shall pass an order in writing granting approval or refusing approval to such public company, as the case may be :

**Provided** that no order refusing approval shall be passed by the Board before allowing an opportunity of being heard to the public company.

(7) The Board shall have the power to withdraw the approval granted under sub-rule (5) in the following circumstances, namely :—

(a) if such public company fails to make investments as per conditions mentioned in sub-rule (3); or

(b) if such public company fails to file the certificate referred to in sub-rule (4).]

#### **Deduction U/S 80G:**

**[Prescribed authority for approval of a University or any educational institution of national eminence for the purpose of section 80G.**

**18AAA.** For the purpose of sub-clause (*iiif*) of clause (*a*) of sub-section (2) of section 80G, the prescribed authority,—

(a) in relation to a university or any non-technical institution of national eminence, shall be the Director General (Income-tax Exemptions), who shall grant approval with the concurrence of the Secretary, University Grants Commission

(b) in relation to any technical institution of national eminence, shall be the Director General (Income-tax Exemptions) who shall grant approval with the concurrence of the Secretary, All India Council of Technical Education.

Explanation : For the purposes of this rule,—

1- ‘All India Council of Technical Education’ means the All India Council of Technical Education established under section 3 of the All India Council for Technical Education Act, 1987 (52 of 1987).

2-University Grants Commission" means the University Grants Commission established under section 4 of the University Grants Commission Act, 1956 (3 of 1956)

**Conditions for allowance for deduction under section 80GG.**

**11B.** The deduction to be allowed under section 80GG in respect of any expenditure incurred by an assessee towards payment of rent for any furnished or un-furnished accommodation occupied by him for the purposes of his own residence shall be allowed subject to the condition that the assessee files the declaration in Form No. 10BA.]

**Specified diseases and ailments for the purpose of deduction under section 80DDB.**

**11DD .** (1) For the purposes of section 80DDB, the following shall be the eligible diseases or ailments :[34]<sup>34</sup>

Neurological Diseases where the disability level has been certified to be of 40% and above,—

- (a) Dementia
- (b) Dystonia Musculorum Deformans ;
- (c) Motor Neuron Disease
- (d) Ataxia
- (e) Chorea
- (f) Hemiballismus
- (g) Aphasia
- (h) Parkinsons Disease
- (i) Malignant Cancers
- (ii) Full Blown Acquired Immuno-Deficiency Syndrome (AIDS)
- (iii) Chronic Renal failure
- (iv) Hematological disorders
  - a- Hemophilia
  - b- Thalassemia

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<sup>34</sup> The Companies Act, 2013, Sec 469

**Immoveable Property (Purchase under chapter XXC ):**

**Jurisdiction of appropriate authority.**

**48J.** Where any immovable property is situate within the local limits of the jurisdiction of two or more appropriate authorities, the appropriate authority within whose jurisdiction the office of the registering officer appointed under the Registration Act, 1908 (16 of 1908), who is entitled to register any document of transfer in respect of such property, is situate, shall be the appropriate authority to perform the function of appropriate authority under Chapter XXC in relation to such property.

## **3.2-IMPORTANT PROVISIONS INCLUDED IN**

### **DIRECT TAX LAW**: [35]<sup>35</sup> [36]<sup>36</sup>

- 1939
  - Appellate functions separated from inspecting functions.
  - A class of officers known as AACs came into existence.
  - Jurisdiction of Commissioners of Income tax extended to certain classes of cases and a central charge was created at Bombay.
- 1940
  - Directorate of Inspection (Income-tax) came into being.
  - Excess Profits Tax introduced w.e.f. 1-9-1939.
- 1941
  - Income-tax Appellate Tribunal came into existence.
  - central charge created at Calcutta.
- 1943
  - Special Investigation Branches set up.
- 1946
  - A few officers of Class-I directly recruited.
  - Demonetisation of high denomination notes made.
  - Excess Profits Tax Act repealed.
- 1947
  - Business Profits Tax enacted (for the period 1-4-1946 to 31-3-1949).
- 1951
  - Report of Income-tax Investigation Commission known as Vardhachari Commission received.

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<sup>35</sup> <https://taxguru.in/income-tax/key-direct-tax-amendments-finance-act-2022.html>

<sup>36</sup> <http://racolblegal.com/distribution-of-revenue-in-the-light-of-the-constitution-of-india-taxation-provisions/>

## Voluntary Disclosure Scheme introduced

- 1952
  - Directorate of Inspection (Investigation) set up.
  - Inspector of Income-tax declared as an I.T. authority.
- 1953
  - Estate Duty Act, 1953 came into existence w.e.f. 15-10-1953.
  - Act XXV of 1953 gave effect to the recommendations of Commission appointed under Taxation of Income (Investigation Commission) Act, 1947.
- 1954
  - Internal Audit Scheme in the Income-tax Department introduced.
  - Taxation Enquiry Commission known as John Mathai Commission set up.
- 1957
  - The Wealth tax Act, 1957 introduced w.e.f. 1-4-1957.
  - I.R.S.(DT) Staff College started functioning at Nagpur and much later four R.T.Is. stationed at Bombay, Calcutta, Bangalore and Lucknow opened.
- 1958
  - The Gift-tax Act, 1958 introduced w.e.f. 1-4-1958.
  - Report of Law Commission received.
- 1959
  - Direct Taxes Administration Enquiry Committee submitted its report.
- 1960
  - Directorate of Inspection (Research, Statistics & Publications) was set up.
  - Two grades of Inspectors - selection and ordinary grades - merged into one single grade.
- 1961
  - Direct Taxes Advisory Committee set up - Direct Taxes Administrative Enquiry Committee constituted.
  - Income-tax Act, 1961 came into existence w.e.f. 1-4-1962.

- Revenue Audit introduced for the first time in the Department.
- New system for evaluation of work done by Income-tax Officers introduced.
- 1963, 1964
  - Central Board of Revenue bifurcated and a separate Board for Direct Taxes known as Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963.
  - For the first time an officer from the department became Chairman of the CBDT w.e.f. 1-1-1964.
  - The Companies (Profits) Sur -tax Act, 1964 was introduced.
  - Annuity Deposit Scheme, 1964 introduced.
- 1965
  - Voluntary Disclosure Scheme came into operation.
- 1966
  - Functional Scheme introduced.
  - Special Recovery Unit created.
  - Intelligence Wing created and placed under the charge of Directorate of Inspection (Investigation).
- 1968
  - Valuation Cell came into existence in the Income tax Department.
  - Report of rationalisation and simplification of tax structure (Bhoothalingam Committee) received.
  - Administrative Reforms Commission set up.
- 1969
  - Direct Recruitment to Class II Income-tax Officers made.
  - The post of IAC (Audit) created in the Income-tax Department.
- 1970
  - The posts of Addl. Commissioner of Income-tax created and abolished after one year.



- Recovery functions which were hitherto performed by Income- tax Officers, given to Tax Recovery Officers. Prior to that State Government officials exercised the functions of a Tax Recovery Officer.
- 1971
  - A new cadre of posts known as Tax Recovery Commissioners introduced w.e.f. 1.1.1972.
  - Report of Direct Taxes Enquiry Committee received.
  - Summary Assessment Scheme introduced w.e.f. 1-4-1971.
- 1972
  - A Special Cell within the Directorate of Inspection (Investigation) created to oversee the cases of big industrial houses.
  - A new cadre of posts known as IAC(Acq.) created and IAC appointed as Competent Authority with the insertion of new Chapter XXA in the Income Tax Act, 1961 on the acquisition of immovable properties in certain cases of transfer to counter evasion of tax.
  - Directorate of Organisation & Management Services (Income- tax) created.
  - The post of I.T.O. (Internal Audit) created.
  - Bradma Scheme in the Income-tax Department introduced.
  - System of Permanent Account Number introduced.
  - Valuation Officers given statutory powers under the Income-tax Act, 1961 and Wealth-tax Act, 1957.
- 1974
  - Compulsory Deposit Scheme (Income-tax Payers) Act, 1974 introduced.
  - Action Plan for the Income-tax Officers introduced for the first time.
  - Concept of M.B.O introduced.
- 1975
  - Voluntary Disclosure Scheme for Income and Wealth implemented.
  - Special Cell for dealing with Smugglers' cases created.

- 1976
  - Settlement Commission created and Taxation Laws (Amendment) Act, 1975 inserted a new Chapter XIXA in the Income Tax Act w.e.f. 1-4-1976.
  - Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 introduced w.e.f. 25-1-1976.
  - A new scheme for departmentalization of accounts introduced.
  - Chokshi Committee submitted its interim report.
- 1977
  - A new cadre of posts known as IAC (Assessment) created.
- 1978
  - Appellate functions given to a new cadre of Commissioners known as Commissioner (Appeals).
  - Directorate of Inspection (Recovery) set up.
  - A new directorate known as Directorate of Inspection (Vigilance) came into existence by bifurcating the functions of Directorate of Inspection (Investigation).
  - Chokshi Committee submitted its final report.
- 1979
  - A new directorate designated as Directorate of Inspection (Publication & Public Relations) created out of the Directorate of Inspection (RS&P).
- 1980
  - Hotel Receipt Tax Act, 1980 came into force w.e.f. 1.4.1981.
- 1981
  - Economic Administrative Reforms Commission set up.
  - Three new Directorates viz. Directorate of Inspection (Intelligence), Directorate of Inspection (Survey) and Directorate of Inspection (Systems) created.
  - Within the Directorate of Inspection (Income Tax and Audit), a separate Director of Inspection (Audit) appointed.
  - Directorate of Inspection (RS&P) re-organised and Directorate of Inspection (P&PR) re-designated as Directorate of Inspection (Printing & Publications).

- I.R.S.(DT) Staff College, Nagpur, re-designated as National Academy of Direct Taxes.
- Special Bearer Bonds (Immunities & Exemptions) Act promulgated.
- Director General (Special Investigation) and Director General (Investigation) appointed to control the functioning of various Directorates under the control of Central Board of Direct Taxes.
- Five posts of Chief Commissioner (Administration) created.
- A few posts of Commissioner of Income-tax were earmarked as Commissioner of Income-tax (Inv.) and Commissioner of Income- tax (Recovery).
- 1982
  - Special Cell within the Directorate of Inspection (Investigation) converted into a separate Directorate and re-designated as Directorate of Inspection (Special Investigation).
  - DIT (Systems) appointed in the Directorate of Income-tax (Organisation and Management Services) to coordinate efforts in introducing electronic data processing in the IT Deptt. A microprocessor based EDP system along with data entry system was installed heralding the era of computerisation.
  - Levy of Hotel Receipts Tax discontinued.
  - Regional Training Institute at Nagpur started functioning under the control of the National Academy of Direct Taxes.
- 1983
  - The vigilance set up reorganised and the strength of Dy. Director (Vigilance) and Asstt. Director(Vigilance) augmented.
  - Computerised systems for processing challans and PAN designed and developed.
- 1984
  - Taxation Laws(Amendment) Act 1984 passed to streamline procedures in the interest of better work management; avoid inconvenience to tax payers; reduce litigation; remove anomalies and rationalise some provisions.

- 1985
  - Post of Director General (Investigation) created for more effective checking of tax evasion.
  - E.D.(Amendment) Act 1985 discontinues levy of estate duty on deaths occurring on or after 16.03.1985.
  - Compulsory Deposit Scheme (Income Tax Payers) Act 1974 discontinued w.e.f. 1.4.1985.
  - Interest Tax Act, 1974 discontinued w.e.f. 31.3.1985
  - A new "Reward Scheme" for motivating officers introduced w.e.f. 1.4.1985.
- 1986
  - The I.T. Act and W.T. Act amended by Taxation Laws (Amendment and Miscellaneous Provisions) Act :-
  - Established Settlement Commission.
  - Introduced Block assets concept for depreciation.
  - Four offices of Appropriate Authority for acquiring property in which unaccounted money is invested set up in metropolitan cities.
- 1987
  - Government's approval obtained to set up three new benches of Settlement Commission.
  - L.K. Jha Committee set up for simplification and rationalisation of tax laws.
  - Office of Directorate General (Tax Exemption) set up at Calcutta.
  - The Direct Tax Law(Amendment) Act 1987 introduced uniform previous year and redesignated the following authorities :-
    - Director of Inspection
    - Insp. Asstt. Commissioner of I.Tax
    - Appellate. Asstt. Commissioner
    - Income tax Officer Gr. A
    - Income tax Officer Gr. B
    - Director of Income Tax
    - Dy. Commissioner of Income Tax.

- -Do- (Appeals)
  - Asstt. Commissioner of I.Tax
  - Income tax Officer
- Expenditure Tax Act 1987 brought into force.
- 1988
  - Benami Transactions Prohibition Act 1988 introduced.
  - The Government announced a "Time Window Scheme" which allowed tax payers 50% rebate of interest u/s 220(2) if they pay the tax and balance interest. The scheme was in operation between 1.7.88 to 30.9.88.
  - CIT (Central) placed under the control and supervision of Director General (Investigation).
  - Government decided that cadre control for Group 'C' and 'D' posts would be with Chief Commissioner and with CBDT for Group 'A' and 'B'posts.
  - Extension of Direct Tax Law to the State of Sikkim by a notification of the President of India dated 7.11.1988.
- 1989
  - Creation of an attached office of DGIT(Management Systems) to supervise Directorate of I.Tax(Research, Statistics, Publication & Public Relations) and Directorate of I.Tax (Organisation and Management Services) from Sept. 1989.
- 1990
  - Gift tax Bill introduced on 31.5.1990.
  - Creation of 65 posts of Dy. Commissioner of I.Tax by upgradation of equal number of posts of Asstt. Commissioner of I.Tax.
- 1991
  - Interest Tax Act, 1974 revived.
  - Directorate of I.Tax(Systems) started reporting directly to Board.
- 1992
  - Rs. 1400 Presumptive Taxation scheme introduced as a measure to widen tax base.

- The post of Director General of Income-tax (Management Systems) was abolished.
- 1993
  - 40 additional posts of Commissioner of Income-tax (Appeals) created.
  - Authority for Advance Rulings set up.
  - A comprehensive phased cadre review for Group B, C and D initiated.
- 1994
  - 2068 additional posts in Group B, C and D sanctioned.
  - New PAN introduced.
  - Regional Computer Centres (RCCs) were set up in Chennai, Delhi and Mumbai.
- 1995
  - New procedure for search assessment introduced.
  - 50 years of training commemorated and "Seminar Twenty Five" introduced by National Academy of Direct Taxes.
- 1996
  - 77 posts of Commissioners of Income-tax created.
  - Infrastructure for operational needs strengthened.
  - Study report on 4th cadre review of Group 'A' officers (IRS) of the Department prepared by Directorate of Income Tax (Organisation and Management Services).
- 1997
  - Rates of Income-tax reduced significantly.
  - Legal measures to widen tax base on certain economic indicators introduced in selected cities.
  - Presumptive tax scheme discontinued.
  - Voluntary Disclosure Scheme 1997 introduced.
  - Minimum Alternate Tax introduced.
  - National Computer Centre (NCC) was set up in Delhi.
- 1998
  - Sec. 260A introduced enabling direct appeals to High Court.

- 1/6 Scheme & penalty for non-filing of return introduced to widen tax base.
- Gift-tax abolished for gifts made after 1.10.1998.
- Kar Vivad Samadhan Scheme 1998 introduced.
- Silver Jubilee of Regional Training Institutes celebrated.
- Designation of Asstt. Commissioner (Senior Time Scale) changed to Dy. Commissioner and that of Dy. Commissioner (Junior Administrative Grade) to Joint Commissioner.
- 1999
  - Furnishing details of bank account and credit cards in the prescribed form made mandatory for refund purpose.
  - Prima-facie adjustments to return done away with; acknowledgments to serve as intimations.
  - Samman Scheme introduced in 1999 to honour deserving tax payers.
- 2000
  - The process of implementation of restructuring of the Department commenced to increase efficiency and to deal with increased workload.
  - Total sanctioned work force reduced from 61,031 to 58,315.
  - Certain rationalisation measures at structural levels introduced.
  - Interest-tax Act terminated with effect from 1-4-2000.
- 2001
  - The restructuring of the Department resulted in reducing the stagnation at all levels and large number of personnel were promoted in various grades.
  - Jurisdiction pattern was revamped.
  - New posts were created at the level of DGIT/DIT in the areas of Research, International Taxation and Infrastructure.
- 2002
  - Computerised processing of returns all over the country introduced.
  - Kelkar Committee Report, inter alia, recommended :-
    - i. Outsourcing of non-core functions of the department ;
    - ii. Reduction in exemptions, deductions, reliefs, rebates etc.

- The National Website of the Income Tax Department ([www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)) was launched to provide a vital interface between the Department and taxpayers.
- 2003
  - The National Website of the Department ([www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)) won the Silver Medal in the category of the 'Government Websites' under the National e-Governance Awards.
- 2004
  - As a measure of widening of tax base, the concept of AIR (Annual Information Return) was introduced.
  - Fringe Benefit Tax (FBT) was introduced as a major step towards widening of tax base and bolstering of the Direct Tax Collection.
  - Securities Transaction Tax (STT) was introduced.
- 2005
  - Tonnage Tax was introduced for the Shipping Companies.
  - Banking Cash Transaction Tax (BCTT) was introduced w.e.f. 01-06-2005.
- 2006
  - A project for enabling electronic filing (e-filing) of Income Tax Returns was launched.
  - Tax Return Preparer Scheme (TRPS) was launched to assist individuals and HUF taxpayers to file their Return of Income.
  - The institution of Income Tax Ombudsman set up in 12 cities throughout the country to look into tax related grievances of the common public.
- 2007
  - The Refund Banker Scheme was launched in Delhi and Patna charges.
  - Sevottam Scheme was launched to standardize service delivery to the taxpayers.
  - The first citizen-friendly single window Aayakar Seva Kendra (ASK) was setup, for centralized receipt and registration of specified categories of documents, including income tax returns.



- The Income Tax Department became the biggest revenue mobiliser for the Government in 2007-08, with its share increasing from 34.76% in 1997-98 to 52.75% in 2007-08.
- All India Tax Network (TAXNET) was setup connecting more than 700 offices in more than 500 cities. Consolidation of 36 (RCC) independent regional databases into a single centralized database (PDC or Primary Data Centre) was carried out.
- Integrated Taxpayer Data Management System (ITDMS) for drawing of 360° taxpayer profile was launched.
- 2008
  - Cyber Forensic Labs were setup to identify relevant digital data during search and survey operations, recover hidden or password protected or deleted data and store retrieved data in a manner so that it could be used as evidence in judicial proceedings.
  - Electronic filing of Income Tax Returns Project was awarded Silver Award in the category "Outstanding Performance in Citizen Centric Service Delivery" under the National e-Governance Awards for the year 2007-08.
- 2009
  - Centralized Processing Centre was setup in Bengaluru for bulk processing of e-filed and paper returns. The Centre operates without any interface with taxpayers in a jurisdiction – free manner.
- 2010
  - Integrated Tax Payer Data Management System (ITDMS) was conferred the Prime Minister's Award for 'Excellence in Governance and Administration'.
  - CPC Bengaluru awarded the Gold Award for 'Excellence in Government Process Re-engineering' under the National e-Governance Awards for the year 2010-2011.
  - To simplify the 50 years old Income-tax Act, 1961, 'The Direct Taxes Code Bill, 2010' was introduced in the Parliament.
- 2011

- Foreign Tax Division of CBDT was strengthened to effectively handle the increase in tax information exchange and transfer pricing issues.
- Various IT initiatives were taken for efficient tax administration. These include e-filing and e-payment of taxes, adoption of 'Sevottam' concept by CBEC and CBDT, web based facility for tax payers to track the resolution of refunds and credit for pre-paid taxes and augmentation of processing capacity.
- A new simplified form 'Sugam' was introduced to reduce the compliance burden of small tax payers falling within presumptive taxation.
- 2012
  - Senior Citizens (not having any income from business/profession), were exempted from payment of advance tax.
  - TRACES (TDS Reconciliation, Accounting and Correction Enabling System) launched to serve an integrated one-stop platform for the stakeholders to facilitate the services related to TDS operations.
- 2013
  - The Government approved the Cadre restructuring of the Department for the creation of 20,751 additional posts and for carrying out various measures to increase the effectiveness of the Department.
  - Briefly, the salient features of the approved restructuring are as under:
    - a. Number of assessment units (AUs) increased by 1080 from 3420 to 4500, for strengthening the tax-administration;
    - b. Each Range to have one more Assessing Officer;
    - c. Increase in the number of Administrative CsIT deployed on assessment related functions to increase from 228 to 250;
    - d. 114 Special Ranges to be created, with adequate supporting manpower;
    - e. Creation of reserves numbering 620 created in the IRS cadre;

f. Bifurcation of the posts of the CITs in the HAG and SAG scales, on functional basis;

g. Up gradation of all existing 116 posts of CCsIT in HAG+ and Apex scales along with an increase of their number by 1 post;

h. Strengthening of the training set-up with creation of three more RTIs;

i. Strengthening the Appellate/Advocacy Structure by increasing the number of CIT Appeals and providing them supporting manpower. Advocacy structure in the ITAT to be strengthened.

- 2014

- New National Website of the Income Tax Department [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in) launched with enhanced new features and content.
- SIT to investigate Black Money in Swiss Bank Accounts formed
- Tax Administrative Reforms Commission (TARC) headed by Dr. Parthasarathi Shome submitted its report of reviewing the applicability of tax policies and tax laws in the context of global best practices and recommending measures for reforms required in tax administration to enhance its effectiveness and efficiency.

**CHAPTER-4-----(126-163)**

**4.1-COMPUTATION OF INCOME UNDER DIRECT  
TAX LAW**

**4.2-DIRECT TAX CASE FILES**

## **4.1-COMPUTATION OF INCOME UNDER DIRECT TAX LAW** <sup>[37]</sup><sup>37</sup>

Income tax is a charge on the assessee's income. Income Tax Act lays down the provisions for computing the taxable income on which tax is to be charged. Taxable income of an assessee / person and tax liability shall be calculated in the following manner:

1. Determine the residential status of the person as per section 6 of the Act.
2. Calculate the income as per the provisions of respective heads of income. Section 14 classifies the income under five heads
  - (i) Income from salaries (only to be consider for individual
  - (ii) Income from House Property
  - (iii) Profits and gains of business or Profession
  - (iv) Capital Gain
  - (v) Income from other sources
3. Consider all the deductions and allowances given under the respective heads before arriving at the gross income.
4. Exclude the income exempt under section 10 of the Act.
5. Aggregate of incomes computed under the 5 heads of income after applying clubbing provisions and making adjustments of set off and carry forward of losses is known as Gross Total Income.
6. Deduct there from the deductions admissible under Sections 80C to 80U. The balance is called Total income. The total income is rounded off to the nearest multiple of Rupees

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<sup>37</sup> <https://www.indiabudget.gov.in/doc/memo.pdf>

ten (Section 288A).

7. Add agriculture income in the total income calculated in (6) above. Then calculate tax on the aggregate as if such aggregate income is the Total Income. 18 PP-DTL&P

8. Calculate income tax on the net agricultural income as increased by Rs. 2,50,000/3,00,000/5,00,000 as the case may be, as if such increased net agricultural income were the total income.

9. The amount of income tax determined under (8) above will be deducted from the amount of income tax determined under (7) above.

10. Calculate income tax on capital gains under Section 112/112A/111A, and on other income at specified rates.

11. The balance of amount of income tax left as per (9) above plus the amount of income tax at (10) above will be the income tax in respect of the total income. Applicable surcharge, if any would be levied. Marginal relief would be provided in cases where the assessee's income marginally exceeds the total income on the basis of which surcharge is leviable and the increase in total tax is more than increase in total income. Health and Education Cess @ 4% will be applied on tax including surcharge

12. Deduct the following from the amount of tax calculated under (11) above:

(A) Tax deducted and collected at source.

(B) Advance tax paid.

(C) Self Assessment tax

(D) Double taxation relief.

13. The balance of amount left after deduction of items given in (12) above, shall be the net tax payable or net tax refundable for the assessee. Net tax payable/refundable shall be rounded off to the nearest multiple of Ten rupees (Section 288B).

14. Along with the amount of net tax payable, the assessee shall have to pay penalties or fines, if any, imposed on him under the Income-tax Act.

In this part you can gain knowledge about the normal tax rates applicable to different taxpayers. For special tax rates applicable to special incomes like long term capital gains, winnings from lottery, etc. refer “Tax Rates” under “Tax Charts & Tables”.

Normal tax rates for Individual & HUF: The normal tax rates applicable to a resident individual will depend on the age of the individual. However, in case of a non-resident individual the tax rates will be same irrespective of his age. For the purpose of ascertainment of the applicable tax slab, an individual can be classified as follows:

A-Resident individual below the age of 60 years.

B-Resident individual of the age of 60 years or above at any time during the year but below the age of 80 years.

C-Resident individual of the age of 80 years or above at any time during the year.

D- Non-resident individual irrespective of the age.

**Income tax slabs and rates : [38]<sup>38</sup>**

The income tax rates are proposed by the Union Finance Minister along with the Union Budget 2019-20 stands as follows:

a) Individual (resident or non-resident), who is of the age of less than 60 years on the last day of the relevant previous year:

Assessment Year 2013-2024	
Net income range	Income-Tax rate
Up to Rs. 2,50,000	Nil
Rs. 2,50,000- Rs. 5,00,000	5%
Rs. 5,00,000- Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

<sup>38</sup> India: The Finance Bill 2012 - Key Changes/Proposals". Mondaq. 14 November 2012. Retrieved 9 March 2013.

b) Resident senior citizen, i.e., every individual, being a resident in India, who is of the age of 60 years or more but less than 80 years at any time during the previous year:

Assessment year 2023-2024

Net income range	Income-Tax rate
Up to Rs. 3,00,000	Nil
Rs. 3,00,000- Rs. 10,00,000	5%
Rs. 5,00,000- Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

C- Resident super senior citizen, i.e., every individual, being a resident in India, who is of the age of 80 years or more at any time during the previous year:  
Assessment year 2023-2024

Net income range	Income-Tax rate
Up to Rs. 5,00,000	Nil
Rs. 5,00,000- Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

D-Hindu Undivided Family (Including AOP, BOI and Artificial Juridical Person)  
Assessment year 2023-2024

Net income range	Income-Tax rate
Up to Rs. 2,50,000	Nil
Rs. 2,50,000 to Rs. 5,00,000	5%



Rs. 5,00,000 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

Surcharge: Surcharge is levied on the amount of income-tax at following rates if total income of an assessee exceeds specified limits:-

Rate of Surcharge Assessment Year 2023-24

Rate of Surcharge				
Range of Income				
Rs. 50 Lakhs to Rs. 1 Crore	Rs.1 Crore to Rs. 2 Crores	Rs. 2 Crores to Rs. 5 Crores	Rs. 5 crore s to Rs.10 Crores	Exceedin g Rs. 10 Crores
10%	15%	25%	37%	37%

Note:

1) The enhanced surcharge of 25% & 37%, as the case may be, is not levied, from income chargeable to tax under sections 111A, 112A and 115AD. Hence, the maximum rate of surcharge on tax payable on such incomes shall be 15%.

2) From Assessment Year 2023-24 onwards:

o The maximum rate of surcharge on tax payable on dividend income or capital gain referred to in Section 112, shall be 15%.

o The surcharge rate for AOP with all members as a company, shall be capped at 15%

However, marginal relief is available from surcharge in following manner

a) in case where net income exceeds Rs. 50 lakh but doesn't exceed Rs. 1 Crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income tax on total income of Rs 50 Lakh by more than the amount of income that exceeds Rs 50 Lakhs.

- b) in case where net income exceeds Rs. 1 crore but doesn't exceed Rs. 2 crore, marginal relief shall be available from surcharge in such a manner that the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore
- c) in case where net income exceeds Rs. 2 crore but doesn't exceed Rs. 5 crore, marginal relief shall be available from surcharge in such a manner that the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 2 crore by more than the amount of income that exceeds Rs. 2 crore.
- d) in case where net income exceeds Rs. 5 crore, marginal relief shall be available from surcharge in such a manner that the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 5 crore by more than the amount of income that exceeds Rs. 5 crore

## **4.2-CASE FILE OF DIRECT TAX:**

### **STUDY CASE NO-1: CENTRAL INFORMATION COMMISSION [39]<sup>39</sup>**

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F.No.CIC/AT/A/2006/00644 & F.No.CIC/AT/A/2006/00646

Dated 21st February, 2007.

Appellant: Ms.Neeru Bajaj ‘Sheel Vansh’, B-131, Sector C, Mahanagar,

Lucknow-226 006.

Respondents : Shri D.C. Pant, Commissioner of Income Tax-II & CPIO, Department of  
Income Tax, Lucknow.

Shri Vinod Kumar, Chief Commissioner of Income Tax & Appellate  
Authority, Department of Income Tax, Lucknow.

1. Appellant, Ms. Neeru Bajaj has filed two appeals against the order Nos. 7862 and 7863, both dated 25.7.2006 of the Appellate Authority (AA), Shri Vinod Kumar, Chief Commissioner of Income Tax, Lucknow. The AA had upheld the order Nos.RTIA/CIT-II/Lko/2006-07/67 and RTIA/CIT-II/Lko/2006-07/67, both dated 8.6.2006 of the CPIO, Shri D.C. Pant, Commissioner of Income Tax-II, Lucknow, given in response to the appellant’s RTI-requests both dated 9.5.2006.
2. Since the subject-matter of these appeals was identical, it was decided to hear both these two appeals together. Parties were called for a hearing on 15.2.2007. The appellant was represented by Shri K.K. Bajaj while the respondents were represented by the CPIO.

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<sup>39</sup> <https://cic.gov.in/>

3. The Appellate Authority upheld the order of the CPIO stating that the queries of the appellant amounted to personal information which have had no relationship to a public activity or interest and therefore attracted exemption under Section 8(1)(j) of the RTI

Act. According to the AA's reasoning, the appellant had sought access to the I.T. Assessment of another person — Smt. Doly Arora, who as an income tax assessee, had furnished the information to the public authority in confidence and in a personal capacity. A rank outsider has had no right to access such information.

4. A perusal of the RTI-request of the appellant shows, that much of the information she has asked for pertains to the I.T. returns of an assessee, Smt. Doly Arora. She has also demanded to know as to why the public authority "failed" to submit the information regarding Smt.Doly Arora, as apparently demanded by the Courts, which according to the appellant, has prevented the appellant from receiving justice.

5. The appellant has also demanded certain other information from the appellant regarding the authority under which salary certificate was issued to Smt.Doly Arora and about the latter's "Form-16" entries.

6. The appellant has cited a profound public purpose in favour of her demand for disclosure of the listed information pertaining to Smt. Doly Arora, which is that she was aiding the public authority by helping unearth suspected tax-evasion by Smt. Arora.

7. The Appellate Authority has strongly urged that the appellant's allusion to public purpose is all too thin a disguise for a rank selfish objective, i.e. to access vital information of an adversary in a court proceeding. Decision

8. It is difficult not to agree with the Appellate Authority. There is little doubt that the type of information that the appellant has sought is "personal" and belongs to a "third party" — Smt. Doly Arora, against whom the appellant is engaged in a court proceeding. This Commission has held in several previous cases that I.T. assessments are personal information, disclosure of which is prohibited by Section 8(1)(j), especially when it involves no public interest or public purpose. During the hearing of

the appeal, the appellant's representative disclosed his mind when he asserted that all that the appellant wanted was to force the I.T. authorities to provide to the Court the documents requisitioned by it. To a query as to why he did not get the Court to force the I.T. authorities to produce the documents before it, the answer was that to get the same from the Courts would be a long drawn out process. Through RTI route it was a lot simpler.

9. The Appellate Authority has drawn attention to this typical use of the RTI Act, which in his view, amounts to derailing the purpose for which the RTI was unveiled over a year ago. He has also drawn attention to parties in court litigation using the RTI to access information to fight their individual battles. He has emphasized the fact that public authorities need not be burdened with collecting and collating the information for the convenience of such litigants. There are copious provisions in other laws to provide to such litigants the information which they seek. There would be no justification for them to resort to the RTI Act to access information, which will otherwise be available to them through recourse to other laws and Acts.

10. Section 8(1)(j) allows the CPIO / the Appellate Authority to assess whether a certain information answers to the description of "personal information" and then to test it against the public purpose cross-check to determine whether its disclosure is possible under the provisions of the RTI Act.

11 In this particular case, I quite agree with the Appellate Authority that the information which the appellant has solicited is personal in nature and there is no public interest which is served by its disclosure. As such, I uphold the orders of the Appellate Authority and reject the appeal.

Sd/-

(A.N. TIWARI)

INFORMATION COMMISSIONER

Authenticated by –

Sd/-

( NISHA SINGH )

Joint Secretary & Additional Registrar

Address of parties:

1. Ms.Neeru Bajaj 'Sheel Vansh', B-131, Sector C, Mahanagar, Lucknow226006.
2. Shri D.C. Pant, Commissioner of Income Tax-II & CPIO, Department of Income Tax, Lucknow.
3. Shri Vinod Kumar, Chief Commissioner of Income Tax & Appellate Authority, Department of Income Tax, Lucknow

**STUDY CASE NO-2 : CENTRAL INFORMATION COMMISSION**

F.No.CIC/AT/A/2008/00240 & 00241

Dated, the 31st July, 2008.

Appellant : Shri Dinesh L. Salvi

Respondents : Directorate General of Income Tax (Investigation)

1. This matter came up for hearing on 03.07.2008 pursuant to Commission's hearing notice dated 26.05.2008. Appellant was present accompanied by his Counsel, Shri Devang H. Shah, while the respondents were absent.
2. The appellant had filed two RTI-applications, dated 03.05.2007 and 11.06.2007, which were replied to by the CPIO on 01.06.2007 and 21.08.2007 respectively. An interim-reply dated 14.06.2007 was also given before the final reply to the RTI-request dated 11.06.2007.
3. The Appellate Authority decided both matters on 16.10.2007. RTI-request dated 06.07.2007.

RTI-request dated 11.06.2007.

4. It is noted that this RTI-application of the appellant was fully replied to by the CPIO on 02.08.2007. As such, this matter stands resolved. There shall be no further disclosure obligation as regards this appeal.
5. Through his communication dated 21.08.2007, the CPIO replied to one part of the RTI-query of the appellant, viz. the date on which the matter was referred to CBDT, New Delhi.
6. As regards the second part of the query, i.e. copy of the letter sent to CBDT, the CPIO stated that it would be premature to disclose this information because it was an internal communication between a subordinate officer with a superior officer. Its disclosure, before a final decision was arrived at, had the potentiality to cause gross misunderstanding, besides complicating the matter. He has stated that there was no public interest in the appellant coming to know about what an officer of a department has written to his superior in the matter of settlement of a petitioner's outstanding bills. Disclosure of internal communication between officers of a given department in the matters of claims by a third-party was fraught with unforeseen dangers and should be considered with extreme caution.
7. Appellant, however, pointed out that it was incumbent on the respondents to settle his outstanding bills within a reasonable time, but rather than being apologetic about it, they were citing all manner of technical reasons to absolve themselves of shouldering the responsibility for the delays which have been so manifestly caused.
8. Commission noted the appellant's concern. It is very clear that there has been unconscionable delay in settling this appellant's outstanding bills by the Department of Revenue, CBDT. Commission would strongly recommend to the CBDT and to other officers of the department that the matter of expeditious disposal of the appellant's case for payments against his outstanding bills should receive the attention it deserves and which has been so far denied to it.

9. Commission would not ordinarily allow disclosure of internal communication between two officers of a public authority. But this rule is to be breached when it is found that injustice — such as delay in authorized payment to a party as in this case — is apparent on the face of records.
10. In the case Brig (Retd) P.K. Kaul Vs. BCCL; Appeal No.CIC/AT/A/2007/00390; Date of Decision: 03.04.2008, Commission had authorized the appellant therein to inspect a file in which a long pending matter regarding outstanding payments of bills of a party was dealt with. It is the Commission's view that a public authority is required to act in all matters fairly, justly and equitably. If Commission gets a sense, on the basis of evidence produced that, a delay in clearing a party's outstanding bills was unconscionable, it must hold that it was uncharacteristic of a public authority's expected mode of working and turn down any plea of confidentiality of the matter / requested information.
11. This case seems to be one in which a party's outstanding payments are withheld for a long time by the public authority. Justice demands that the party be allowed access to the file in which this case was dealt with.
12. It is, therefore, directed that within 2 weeks from the date of the receipt of this order, CPIO shall allow the appellant to inspect the file in which the requested information (an internal communication) is contained.
13. Appeals allowed.
14. Copy of this decision be sent to the parties.

Sd/-

(A.N. TIWARI INFORMATION COMMISSIONER)



**STUDY CASE NO 3: What is the nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time – a capital receipt or a revenue receipt? [40]<sup>40</sup>**

CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)

**FACTS OF THE CASE:** The assessee, a cement manufacturing company, entered into an agreement with a supplier for purchase of additional cement plant. One of the conditions in the agreement was that if the supplier failed to supply the machinery within the stipulated time, the assessee would be compensated at 5% of the price of the respective portion of the machinery without proof of actual loss. The assessee received Rs. 8.50 lakhs from the supplier by way of liquidated damages on account of his failure to supply the machinery within the stipulated time. The Department assessed the amount of liquidated damages to income-tax. However, the Appellate Tribunal held that the amount was a capital receipt and the High Court concurred with this view.

**Supreme Court's Decision:** The Apex Court affirmed the decision of the High Court holding that the damages were directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which lead to delay in coming into existence of the profit-making apparatus. It was not a receipt in the course of profit earning process. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, is not in the ordinary course of business, hence it is a capital receipt in the hands of the assessee

**STUDY CASE NO-4 : Can national interest on security deposit given to land lord in respect of residential premises taken on rent by the employer and provided to the employee, be included in the perquisite value of rent freeaccommodation given to the employee?**

Ans: CIT v. Shankar Krishnan (2012) 349 ITR 0685 (Bom.)

**FACTS OF THE CASE:** The assessee, a salaried employee, was provided with rent-free accommodation, being a flat in Mumbai, by his employer company. The monthly

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<sup>40</sup> <https://dt.cchtaxonline.com/cases>

rent paid by the employer in respect of the said flat was Rs. 10,000 per month. The employer had given an interest-free refundable security deposit of Rs. 30 lacs to the landlord for renting out the said premises. The assessee-employee computed the perquisite value on the basis of rent of Rs. 10,000 paid by his employer to the landlord, since the same was lower than 10% (now, 15%) of salary.

**Assessing Officer's contention:** The Assessing Officer, however, contended that since the employer had given interest-free deposit of Rs. 30,00,000 to the landlord, interest @12% on the said deposit is required to be taken into consideration for estimating the fair rental value of the flat given to the assessee and accordingly, he enhanced the perquisite value of the residential accommodation provided to the employee by such notional interest. The Commissioner (Appeals) upheld the decision of the Assessing Officer.

**Tribunal's Observations:** The Tribunal observed that, as per Rule 3 of the Income-tax Rules, 1962, the perquisite value of the residential accommodation provided by the employer shall be the actual amount of lease rent paid or payable by the employer or 10% (now, 15%) of salary, whichever is lower, as reduced by the rent, if any, actually paid by the employee. The Tribunal, therefore, held that there is no concept of determination of the fair rental value for the purpose of ascertaining the perquisite value of the rent-free accommodation provided to the employees **High Court's Decision:**

On appeal by the Revenue, the Bombay High Court held that the Assessing Officer is not right in adding the notional interest on the security deposit given by the employer to the landlord in valuing the perquisite of rent-free accommodation, since the perquisite value has to be computed as per Rule 3 and Rule 3 does not require addition of such notional interest. Thus, the perquisite value of the residential accommodation provided by the employer would be the actual amount of lease rental paid or payable by the employer, since the same was lower than 10% (now 15%) of salary.

**STUDY CASE NO-5: Under what head of income should income from letting out of godowns and provision of warehousing services be subject to tax - “Income from house property” or “profits and gains of business or profession”? [41]<sup>41</sup>**

CIT v. NDR Warehousing P Ltd (2015) 372 ITR 690 (Mad)

Facts of the case: The assessee engaged in the business of warehousing, handling and transport business claimed income from letting out of buildings and godowns as business income. The Assessing Officer assessed such income as “Income from house property”.

Appellate Authorities’ Observations: The Commissioner (Appeals) observed that the assessee’s activity was not merely letting out of warehouses but storage of goods with provision of several auxiliary services such as pest control, rodent control and fumigation service to prevent the goods stored from being affected by vagaries of moisture and temperature. Further, service of security and protection was also provided to the goods stored. There is, therefore, no dispute that the assessee carries on the activity in an organised manner. These activities are more than mere letting out of the godown for tenancy. The Tribunal noted that the objects clause of the memorandum of association of the company clearly shows that the assessee-company was incorporated with the object of carrying on the business of warehousing and letting/renting of godowns and providing facilities for storage of articles or things and descriptions whatsoever. The profit and loss account of the assessee- company shows that its main source of income is storage charges and maintenance or user charges. Even substantial part of the expenses also relate to the salaries of employees engaged in the maintenance and upkeep of the godowns and warehouses. Based on these facts, Tribunal concurred with the findings of the Commissioner (Appeals) and held that the income of the assessee from letting out of warehouses and godowns is chargeable under the head “Profits and gains of business or profession” and not “Income from house property”.

High Court’s Decision: The High Court observed that the Commissioner (Appeals) as well as the Tribunal had not only gone into the objects clause of the memorandum of the assessee but also individual aspects of the business to come to the conclusion that it was a

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<sup>41</sup> <https://incometaxindia.gov.in/Pages/right-to-information/case-laws.aspx>

case of warehousing business, and, therefore, the income would fall under the head “Profits and gains of business or profession”. Accordingly, the High Court held that the income earned by the assessee from letting out of godowns and provision of warehousing services is chargeable to tax under the head “Profits and gains of business or profession” and not under the head “Income from house property”.

**STUDY CASE NO-6: INCOME ON ACCRETION NOT TO BE CLUBBED** [42]<sup>42</sup>

Commissioner of Income-Tax vs M.S.S. Rajan on 20 June, 2001

**FACTS OF THE CASE:** The assessee transferred a flat which was in his name to that of his wife. There was no consideration for such transfer. The rental income from the flat was taxed in the hands of the assessee. Despite the transfer, the rental income realised from the flat was treated as the income of the assessee by reason of Section 64(1)(iv) of the Income-tax Act, 1961. The wife being prudent, instead of spending the rental income, chose to save the same and the savings so effected were put in a fixed deposit in her name.

**CONTENTION OF REVENUE:** Assessing officer was of the view that such interest accruing to the wife is should be clubbed in the hands of assessee u/s 64(1)(iv), therefore, interest accruing to her from those deposits was regarded by the Income-tax Officer as the income of the assessee for the assessment year 1979-80.

**VIEW OF TRIBUNAL:** The correctness of that view was questioned by the assessee in appeal. The Appellate Assistant Commissioner agreed with the assessee. The Revenue’s appeal to the Tribunal against that order in appeal having proved unsuccessful.

**HIGH COURT’S OBSERVATIONS:** Section 64(1)(iv) of the Income-tax Act refers to “such income as arises directly or indirectly to the spouse of such individual” “from the assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart”. The income from the asset transferred to the spouse for inadequate consideration is, by reason of Section 64, made taxable in the hands of the spouse who transferred the asset. What is

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<sup>42</sup> <https://incometaxindia.gov.in/Pages/right-to-information/case-laws.aspx>

made taxable in the hands of the transferor-assessee is the income from the asset. The manner in which the income realised from the asset is applied--whether it is spent or saved is a matter which falls outside the purview of Section 64. This section merely treats the income from the asset transferred for inadequate consideration as taxable in the hands of the assessee-transferor and nothing more. The source of the interest income derived by the assessee's wife who had saved the rental income— and made the fixed deposit is not the flat that was transferred to her. The source is the money which she had deposited in the bank. There was no direct nexus between the interest which she received on her deposit and the flat which had been transferred to her name by her husband for inadequate consideration. The scope of Section 64 is limited to income which is directly or indirectly received from the transferred— asset and does not include income received from the savings effected from the income realised from the transferred assets. Therefore, Tribunal was right in deleting the assessee's wife's interest income included in the income— of the assessee, in favour of the assessee and against the Revenue.

**STUDY CASE NO-7: CIT Vs. Anil Hardware Store (2010) 323 ITR 0368 (HP)**

Relevant section: 40(b)(v)

**FACTS OF THE CASE :**

The partnership deed of the assessee firm provided that in case the book profits of the firm are up to Rs. 75,000, then the partners would be entitled to remuneration up to Rs. 50,000 or 90 per cent of the book profits, whichever is more. In respect of the next Rs. 75,000, it is 60 per cent and for the balance book profits, it is 40 per cent. Thereafter, it is further clarified that the book profits shall be computed as defined in section 40(b) of the Income-tax Act, 1961, or any other provision of law as may be applicable for the assessment of the partnership firm. It has also been clarified that in case there is any loss in a particular year, the partners shall not be entitled to any remuneration. Clause 7 of the partnership deed laid down that the remuneration payable to the partners should be credited to the respective accounts at the time of closing the accounting year and clause 5 stated that the partners shall be entitled to equal remuneration. HIGH COURT'S

## DECISION

he High Court held that the manner of fixing the remuneration of the partners has been specified in the partnership deed. In a given year, the partners may decide to invest certain amounts of the profits into other venture and receive less remuneration than that which is permissible under the partnership deed, but there is nothing which debars them from claiming the maximum amount of remuneration payable in terms of the partnership deed. The method of remuneration having been laid down, the assessee- firm is entitled to deduct the remuneration paid to the partners under section 40(b)(v) of the Income-tax Act.

Note:

(1) Payment of remuneration to working partners is allowed as deduction if it is authorised by the partnership deed and is subject to the overall ceiling limits specified in section 40(b)(v). The limits for partners' remuneration under section 40(b)(v) has revised upwards and the differential limits for partners' remuneration paid by professional firms and non-professional firms have been removed. On the first Rs. 3 lakh of book profit or in case of loss, the limit would be the higher of Rs. 1,50,000 or 90% of book profit and on the balance of book profit, the limit would be 60%.

(2) The CBDT had, vide Circular No. 739 dated 25-3-1996, clarified that no deduction under section 40(b)(v) will be admissible unless the partnership deed either specifies the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration. In this case, since the partnership deed lays down the manner of quantifying such remuneration, the same would be allowed as deduction subject to the limits specified in section 40(b)(v).

**STUDY CASE NO-8: INCOME-TAX OFFICER V. VENKATESH PREMISES CO-OPERATIVE SOCIETY LTD. (SC) [43]**<sup>43</sup>

Whether certain receipts by co-operative societies from its members (non-occupancy charges, transfer charges, common amenity fund charges) are exempt based on the doctrine of mutuality?

**Supreme Court's observations:**

The doctrine of mutuality is based on the common law principle that a person cannot make a profit from himself. The income of a co-operative society from business is taxable under section 2(24)(vii) and will stand excluded based on the principle of mutuality. The essence of the principle of mutuality lies in the commonality of the contributors and the participants who are also the beneficiaries. The contributors to the common fund must be entitled to participate in the surplus and the participators in the surplus are contributors to the common fund. Any surplus in the common fund shall, therefore, not constitute income but will only be an increase in the common fund meant to meet sudden eventualities. The Supreme Court made the following observations:

- If for convenience, part of the transfer charges were paid by the transferee, they would not partake of the nature of profit. The amount is appropriated only after the transferee was inducted as a member. In the event of non-admission, the amount was returned. The moment the transferee was inducted as a member the principles of mutuality would apply.
- Non-occupancy charges were levied by the society and were payable by a member who did not himself occupy the premises but let them out to a third person. The charges were utilised only for common benefit of facilities and amenities to the members.
- Contribution to the common amenity fund taken from a member disposing of property was utilized for meeting heavy repairs to ensure hazard-free maintenance of the properties of the society which ultimately benefitted the members. Membership forming a class, the identity of the individual member not being relevant, induction into membership automatically attracted the doctrine of mutuality.
- If a society had surplus floor space index available, it was entitled to utilise it by making fresh construction in accordance with law. Naturally, such additional construction would entail extra

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<sup>43</sup> <https://incometaxindia.gov.in/Pages/right-to-information/case-laws.aspx>

maintenance charges. If the society first inducted new members who were required to contribute to the common fund for availing of the common facilities, and then granted only occupancy rights to them by draw of lots, the ownership remaining with the society, the receipts could not be bifurcated into two segments of receipt Lesson 12 n Recent Case Laws 655 and costs, so as to hold the former to be outside the purview of mutuality classifying it as income of the society with commerciality.

**Supreme Court's Decision:** The doctrine of mutuality, is based on the common law principle that a person cannot make a profit from himself. Accordingly, the transfer charges, non-occupancy charges common amenity fund charges and other charges are exempt owing to application of the doctrine of mutuality.

**STUDY CASE NO-9: RAJ DADARKAR AND ASSOCIATES V. ASSISTANT COMMISSIONER OF INCOME TAX (SC) [44]**<sup>44</sup>

Whether rental income earned from letting out of premises is to be treated as business income or as income from house property?

**Facts of the case:** The assessee had acquired the right to conduct a market on certain land from Municipal Corporation, Greater Bombay under an auction on May 28, 1993. The premises allotted to the appellant was a bare structure and it was for the appellant to make the premises fit to be used as a market. The appellant spent 656 PP-DTL&P substantial sums to construct 95 shops and 30 stalls. From the years 1999 to 2004, the assessee treated income from sub-letting of such shops and stalls as business income. The return of the assessee for assessment year 2000-2001 was reopened by Assessing Officer by issuing notice under section 148. Issue: Whether the income earned by the appellant is to be taxed under the head 'Income from house property' or 'Profits and gains from the business or profession'?

**Supreme Court's Observations:** The Supreme Court held that wherever there is an income from leasing out of premises, it is to be treated as income from house property. However, it can be treated as business income if letting out of the premises itself is the

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<sup>44</sup> <https://incometaxindia.gov.in/Pages/right-to-information/case-laws.aspx>



business of the assessee. The question has to be decided based on the facts of each case as was held in Sultan Brothers Pvt Ltd. v. CIT [1964] 51 ITR 353 (SC). In the given facts, it was an undisputed fact that the assessee would be considered to be a deemed owner under section 27(iib) read with section 269UA(f) as it had a leasehold right for more than 12 years. The only evidence adduced for proving that letting out and earning rents is the main business activity of the appellant was the object clause of the partnership deed. The clause provided that “The Partnership shall take the premises on rent to sub-let or do any other business as may be mutually agreed by the parties from time to time.” The

Supreme Court held the clause to be inconclusive and observed that the assessee had failed to produce sufficient material to show that its entire or substantial income was from letting out of the property.

**Supreme Court’s Decision:**

The Supreme Court, accordingly, held that, in this case, the income is to be assessed as “Income from house property” and not as business income, on account of lack of sufficient material to prove that the substantial income of the assessee was from letting out of the property.

**Note** - In Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673, the Supreme Court observed that holding of the properties and earning income by letting out of these properties is the main objective of the company. Further, in the return of income filed by the company and accepted by the Assessing Officer, the entire income of the company comprised of income from letting out of such properties. The Supreme Court, accordingly, held that such income was taxable as business income. Likewise, in Rayala Corporation (P) Ltd. v. Asst. CIT (2016) 386 ITR 500, the Supreme Court noted that the assessee was engaged only in the business of renting its properties and earning rental income therefrom and accordingly, held that such income was taxable as business income. In this case, however, on account of lack of sufficient material to prove that substantial income of the assessee was from letting out of property, the Supreme Court held that the rental income has to be assessed as “Income from house property”

**RECENT DIRECT TAX CASE FILE:**

**STUDY CASE NO -10 : [45] <sup>45</sup>**

CENTRAL INFORMATION COMMISSION

Room No.308, B wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066

Appeal No. CIC/AT/A/2008/00628

Appellant: Shri Milap Choraria

Public Authority: Central Board of Direct Taxes

Date of Hearing: 13/05/2009

Date of Decision: 15/06/2009

FACTS:- The background of the matter is that Shri Arvind Choraria son of Appellant Shri Milap Choraria got married with Ms. Sushmita Karnavat in 1996 and two children were born out of the wedlock. Differences arose between the husband and the wife and they started living separately in 2003. Smt. Sushmita Choraria lodged FIR No. 151/2007 at Police Station Shiv Pur, District Hawra (West Bengal), against Arvind Choraria (husband), Milap Choraria (father-in-law), Smt. Sajjan Devi (mother-in-law) and certain other members of the Choraria family. The case was registered under section 498A IPC read with section 3&4 of the Dowry Prohibition Act and Domestic Violence Act etc. on the allegations that FIR named accused forced Smt. Sushmita Karnavat's father Inder Chand Karnavat to give dowry valued at about rupees 50 lacs in the marriage.

**STUDY CASE NO-11:**

CENTRAL INFORMATION COMMISSION

Room No.308, B wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066

Appeal No. CIC/S/A/2009/00 0132

Appeal No. CIC/S/A/2009/00 0133

Appellant: Shri Sunit Shah

Public Authority: Income Tax Department

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<sup>45</sup> <https://incometaxindia.gov.in/Pages/right-to-information/case-laws.aspx>

(through Advocate P. Roychaudhuri)

Date of Hearing: 11-12/02/2009

Date of Decision: 16/02/2009

**FACTS OF THE CASE :**

1- The background of the matter is that a Survey Team of the Income Tax Department had visited the commercial premises of the Appellant located at 188, Gopal Park, Chander Nagar, Delhi, on 19/03/2008. A team of the officers of the Income Tax Deptt. was accompanied by a number of security personnel. Additional police personnel were also requisitioned later on. In this connection, the Appellant had filed two RTI applications for seeking information on certain point.

2. In RTI application dated 28/03/2008, the Appellant had requested for information on the following six points:-

1. How many officials were deployed in the survey team which continued at the premises for 23 hrs. along with their names, designations, place of posting of each member, address and telephone numbers of each and every official?
2. Which authority was monitoring the survey team?
3. Number of armed policemen deployed along with survey team, designation, telephone number and address of each and everybody?
4. How many officers, staff members, inspectors and peons were deployed in the survey team?
5. Number of vehicles, classified vehicle alongwith registration number?
6. Dinner, Breakfast and Lunch was brought from Nathu's Sweets and cold drinks were also consumed – How much amount was expended? Was it debited to official account?"

3. In subsequent RTI application dated 10/05/2008, the Appellant had sought information on the following eight points:-

1. How many officials were deployed in the survey team along with their names, designations, places of posting of each member, address & telephone number of each & every official.
2. Names of how many authorized persons were indicated on the authorization letter in respect of 188, Gopal Park, Chander Nagar, Delhi, along with their names.

3. Names of persons and their number who put signatures as witnesses on authorization letter.
  4. Which authority was monitoring the survey team?
  5. Number of Armed CRPF personnel deployed along with survey team, designation, telephone number and address of each and everybody?
  6. How many officers, staff members, inspectors and peons were deployed in the survey team?
  7. Number of vehicles, classified vehicle alongwith registration number?
  8. Dinner, Breakfast and Lunch was brought from Nathu's Sweets and cold drinks were also consumed – How much amount was expended? Was it debited to official account?"
4. As regards the RTI application dated 28/03/2008, CPIO had furnished the following information to the Appellant vide his letter dated 15/05/2008:-
- The information sought by you is as follows:-
- (a) The manpower deployed for the survey u/s 133A of the Income Tax Act, 1961, carried out on 19.03.2008 is as follows:-
    - (i) Authorized Officers: Seven
    - (ii) Authorized Inspectors: Six
    - (iii) Supporting Staff: Fourteen
  - (b) On the spot monitoring of the survey activities was being done by the respective authorized officers, under the overall monitoring of the Joint Commissioner of Income Tax, Range 36, New Delhi.
  - (c) Number of Armed police personnel requisitioned for the Survey; Twelve
  - (d) Number of vehicles used in the Survey: Five.” He had refused to disclose information on the remaining points in terms of section 8(1)(g)&(i) of RTI Act, 2005.
5. As regards RTI application dated 10/05/2008, CPIO had responded to the Appellant vide his letter dated 28/05/2008 mentioning therein that the requisite information had already been furnished to him vide his earlier letter dated 15/05/2008.
6. Dissatisfied with the decisions of CPIO, the Appellant had filed Appeals before the First Appellate Authority. The Appellate Authority, vide order dated 13/06/2008 and 26/06/2008, had upheld the decisions of the CPIO. 132 133SUNITSHAH INCOME TAX

**7.** The above cited two Appeals have been filed against the orders of CPIO/AA. As the issues involved are the same, it has been decided to dispose them of through a common order.

**8.** The matter was heard on 11/02/2009. The Appellant was present before the Commission along with Advocate G.R. Agnihotri. The Income Tax Department is represented by Advocate P. Roychaudhuri.

**9.** The main submissions of Advocate Agnihotri are as follows:-

(i) that the names, designations and places of posting of the officials who constituted the Survey Team may be disclosed;

(ii) that the identity of the authority which was monitoring the survey team may be disclosed; (iii) that the registration numbers of the vehicles which were used by the Income Tax personnel in the above mentioned survey may be disclosed;

(iv) that the amount spent on the eatables procured by the Survey Team for breakfast, lunch and dinner etc, which was obtained from Nathu Sweets, and the sources thereof may be disclosed.

**10.** On the other hand, the main submissions of Advocate P. Roychudhuri are as follows:-

(i) that the Survey Team of Income Tax Department was duly authorized by the Competent Authority. In proof thereof, he produced the relevant file before the undersigned which was duly perused;

(ii) that initially, two units comprising of twelve police personnel had accompanied the Survey Team, but, subsequently, additional police force was requisitioned in view of the prevailing law and order situation;

(iii) that the money spent on food and drinks etc. was contributed by the members of the Survey Team and as it was a small amount, it was not reimbursed by the Government. He has vehemently argued that the information requested for by the Appellant should not be disclosed as the Income Tax personnel apprehend harassment and intimidation at the hands of the Appellant.

**11.** As the hearing could not be completed, it was adjourned to 12/02/2009 at 15.00 hrs. As scheduled, the hearing was resumed on 12/02/2009. Advocate Agnihotri and

Advocate P. Roychaudhuri are present before the Commission. Advocate Agnihotri has relied on the following decisions of this Commission:-

(i) Appeal No. ICPB/A-1/CIC/2006(Satya Pal Vs. CPIO, TCIL), wherein it was held that the RTI Act has been enacted to vest the citizens with the right to access to information under the control of Public Authorities in 132 133SUNITSHAH INCOME TAX 11 02 14 4 order to promote transparency and accountability in the working of such public authorities.

(ii) Appeal No.CIC/A/12/2006(S.C. Sharma Vs. Ministry of Home Affairs), wherein the Union Home Ministry was directed to provide a copy of the order through which it had authorized the CBI to intercept telephone calls under the Indian Telegraph Act, 1885. It is Advocate Agnihotri's submission that in the interest of transparency and accountability in public life, it is imperative that the information requested for by him is disclosed.

**12.** On the other hand, Advocate P. Roychaudhuri appearing on behalf of the Income Tax Department, has vehemently opposed disclosure of information requested for by the Appellant on the ground that it is exempted under the exemption clauses of section 8(1) of the RTI Act. Advocate R. Roychaudhuri had also pleaded that the Survey was conducted by the officials of the Income Tax Department as per the provisions of law and the officials deployed therein acted in good faith and under bonafide discharge of their duties and obligations. He has also pleaded that disclosure of names, designations and phone numbers of the officials who participated in the conduct of Survey is contrary to public interest as they merely assisted the authorized officer and had no role in decision making process. He has also pleaded that disclosure of the names and designations of the officers deployed in the Survey is likely to cause them harassment and intimidation and even personal threats to them.

**13.** Needless to say, the Survey was conducted under the authority of law. As per the file produced before the Commission, the competent Authority had authorized certain officers to conduct the Survey. The plea of the Income Tax Department that disclosure of names and designations of the officers deployed in the Survey would cause them harassment, intimidation and even personal threats appears to be rather far-fetched. The officers deployed in the Survey are public servants and, admittedly, they have acted under the colour of the office and they cannot be expected to be so fragile as to insist on

keeping their identities secret while discharging their official duties. The society expects them to be made of sterner stuff. It may also be apt to refer to the law laid down by the Hon'ble supreme Court in D.K. Basu Vs. State of West Bengal wherein it has been held that the police officers causing an arrest will not only be in uniform but also bear the name plates and in the eventuality of arrest of any person, would inform the next of kin of the arrestee or his friend about the arrest having been caused as also about the place where the arrestee is being detained. This ruling is applicable to the case in hand to some extent in as much as the officials of the Income Tax Department were performing their public duties while conducting the Survey and, therefore, there appears to be no harm if their names and designations are intimated to the Appellant. It is also to be noted that some of this information is disclosable even otherwise u/s 4(1)(b) of the RTI Act. It is also to be noted that in para 4 above, CPIO has furnished numerical information to the Appellant about the authorized officers, authorized inspectors, supporting staff and the number of police personnel requisitioned for the Survey work etc. The same would hold good for the registration numbers of the cars used by the team in the Survey work. 132 133SUNITSHAH INCOME TAX 11 02 14 5 However, the plea of the Appellant that the amount spent on the breakfast, lunch and dinner of the Survey Team and the source thereof should be intimated to him appears to be rather trite. The plea of Advocate P. Roychaudhuri that a small amount was spent on it which was contributed by the members of the Survey Team and that no re-imburement was claimed from the Government appears to be on the right lines.

**14.** In view of the above discussion, the following information may also be disclosed to the Appellant:-

- (1) The names, designations and the places of posting of officers and inspectors of the Department who were deployed in the Survey work;
- (2) The name and designation of the authority which was monitoring the Survey Team may be disclosed; and
- (3) The registration number of vehicles – whether Departmental or hired - used in the Survey work may be disclosed as per records.

**15.** The orders of the CPIO and the Appellate Authority are modified to the extent directed herein above.

DECISION

16. The order of the Commission may be complied in three weeks time.

Sd/-

(M.L. Sharma)

Central Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(K.L. Das)

Assistant Registrar Tele: 011 2671 73 53

**STUDY CASE NO-12** : CENTRAL INFORMATION COMMISSION [46]<sup>46</sup>

No.CIC/AT/A/2007/00617

Block IV, 5th Floor, Old JNU Campus

New Delhi-110 067

Under Section 19 of the Right to Information Act, 2005

Name of the Appellant:

Shri Kamal Anand

C/o People for Transparency

Telephone Exchange Road

Near Shiva Timber Sangrur.

Public Authority:

Central Board of Direct Taxes (CBDT)

Ministry of Revenue Department of Finance,

North Block New Delhi.

Date of Hearing :

18.12.2007

Date of Decision :

11.2.2008.

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<sup>46</sup> The Institution of company Secretaries Of India  
Under the Jurisdiction of Ministry of corporate affairs  
ICSI House-22 Institutional Area, Lodi Road New Delhi 110003



**STUDY CASE NO-13 : CENTRAL INFORMATION COMMISSION**

F.No.CIC/AT/A/2007/01023

Dated, the 20th December, 2007.

Appellant : Dr. Roop, Roop Netralaya, Opp. NAS College,  
E.K. Road, Meerut.

Respondents : Shri Anand Deep, Director of Income Tax (Inv)  
& CPIO, Office of Director  
General of Income Tax (Inv), 16/63 Anand Nikunj,  
Civil Lines Kanpur-208 001.

Shri Vineet Sahai, Director General of Income Tax (Inv) &  
Appellate Authority, Aayakar Bhawan, 5 Ashok Marg,  
Lucknow-226 001.

This is a second-appeal filed by the appellant (Dr.Roop) against the order dated 9.5.2007 of the Appellate Authority (AA), corresponding to the RTI-application of the appellant dated 9.3.2007 and the CPIO's reply of 12.4.2007 thereof

**STUDY CASE NO -14 : CENTRAL INFORMATION COMMISSION**

F.No.CIC/AT/A/2007/00781

Dated, the 10th December, 2007.

Appellant : Ms.Alka Mehta, H.No.F-3D, Saket, New Delhi-110017.

Respondents : Shri S.S. Rathore, Commissioner of Income Tax & CPIO,  
Central-III, Income Tax Department, Room No.325, ARA  
Centre, E-2 Jandewalan Extension, New Delhi-110 055.  
Shri Suresh Trikha, Chief Commissioner of Income Tax &  
Appellate Authority, Income Tax Department, Room No.325,  
ARA Centre, 3rd Floor, E-2, Jhandewalan Extension, New  
Delhi-110 055.

This is a second-appeal filed by Ms.Alka Mehta (appellant) against the order of the Appellate Authority (AA), dated 15.5.2007. The appellant had filed her RTI-application before the CPIO, Shri S.S. Rathore on 16.3.2007 and received a response on 9.4.2007.

**STUDY CASE NO -15:** CENTRAL INFORMATION COMMISSION[47]<sup>47</sup>

F.No.CIC/AT/A/2007/00349

Dated, the 21st June, 2007.

Appellant : Shri Vasant Shankar Patwardhan, 10/177 Shree Parleshwar Coop Housing Society Ltd., Shahaji Raje Marg, Vile Parle-East, Mumbai-400 057.

Respondents : Shri L.R. Nayyar, Commissioner of Income Tax-21,Mumbai & CPIO, C-11,Room No.612, Pratyakshakar Bhavan BandraKurla Complex, Mumbai-400 051.

Appellate Shri Shaikh Naimuddin, Chief Commissioner of Income Tax-XI &

Authority, Office of the Chief Commissioner of Income Tax-XI, R.No.539 Aayakar Bhawan, M.K. Road, Mumbai-400 020.

This second appeal is by Shri Vasant Shankar Patwardhan—the appellant, against the order of the Appellate Authority, dated 6.2.2007. The appellant had filed his RTI-request on 16.11.2006, and received the CPIO’s replies on 12.12.2006, 13.12.2006, 15.12.2006 and 10.1.2007. The appellant filed his first appeal against the CPIO’s replies and thereafter came up in second appeal before the Commission.

2. Parties were called for a hearing on 20.6.2007. The appellant was absent while the respondents were represented by the CPIO.

3. The RTI-request of the appellant reads as follows:- “Copies of all internal / external correspondence, notes, file notings, recommendations, memos, observations, opinions,

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<sup>47</sup> <https://incometaxindia.gov.in/Pages/right-to-information/case-laws.aspx>

advises [sic] in relation to and information about further actions taken by the Department in the matters after 10th May, 2006 in the cases of Shree Parleshwar Co-operative Housing Society Ltd., (having their address at Shahaji Raje Marg, Vile-Parle(East), Mumbai-400 057) for the assessment years 1998-1999, 1999-2000, 2000-2001, 2001-2002.”

4. The AA, in his order, noted that the appellant’s request for information was broadly worded. He wanted to receive “all” information, which he briefly described in his RTI-request. The CPIO furnished the information according to his understanding of what “all” meant. The appellant did not state before the AA as to which precise information was withheld by the CPIO. The AA turned down the appellant’s request that the CPIO should be called upon to furnish to him a certificate that no information was left beyond what the CPIO had supplied to the appellant. The AA held that the appellant had no right to demand such a certificate from the CPIO under the provisions of the RTI Act.

5. The CPIO, in his written submission before the Commission, stated that, vide his letters dated 15.12.2006 and 10.1.2007, he provided the following items of information to the appellant:- 2 “(a) Copy of appeal filed u/s.260A before the Mumbai High Court. (b) Copy of Miscellaneous Application filed before the ITAT, Mumbai. (c) Order sheet notings. (d) Report of the Assessing Officer on the feasibility of appeal u/s.260A. (e) Note prepared by the CIT-21 seeking approval of the CCIT-XI, Mumbai for filing appeal u/s.260A. (f) Opinion of the Govt. Counsel regarding filing of Miscellaneous Petition to the ITAT which clearly gives advice not to file Miscellaneous Petition before the Hon’ble ITAT.”

6. He further stated that in the opinion of the CPIO, the above information / documents supplied to the appellant covered all the information solicited by the appellant. The CPIO also advised the appellant that if the latter so needed, he might contact the CPIO for any further specific information. This opportunity offered by the CPIO was not availed by the appellant. It is the plea of the CPIO, that the appellant’s statement that he (the appellant) had reasons to believe that all the information sought by him had not been furnished to him was nothing more than the appellant’s own surmise. It was not required of the CPIO

to respond to the hypothetical assumptions about presence or absence of information which the appellant seemed to nurture.

7. The CPIO has further noted that the appellant has exhibited unusual belligerence in his approach and attitude. It would appear that no matter what was supplied to the appellant by way of information, he would still assume that more needed to be provided to him without ever specifying what that “more” was. The appellant was duty-bound to supply clearly the details of the precise information he wished to have. He could not prefix the request for information with seamless words such as all, every, etc. and then, when supplied the information, complain that not everything had been provided.

8. The CPIO has further pointed out that the appellant’s request for information was rooted in an ongoing dispute in the Cooperative Society where he seemed to lead a faction. The use of the RTI route by the appellant was to achieve the singular purpose of defeating or defaming his opponents in the Society. A number of Court cases had also been occasioned by the continuing disputes in the Society.

9. The CPIO urged that while the RTI Act gave unfettered rights to any citizen to apply and receive admissible information, the Commission should not overlook the fact that the provisions of this Act would be used by sections of people in order to bring pressure on and thereby influence the actions and the decisions of a public authority.

10. The appellant has also brought up a matter regarding demand of excess fee for supply of the information. The CPIO has clarified that the demand of Rs.270/- made on the appellant was later on scaled down to Rs.150/-. The information was, nevertheless, provided to the appellant even without waiting for the fee. Decision:

11. To take up the matter regarding excess fee first, the Commission notes that the CPIO has adequately explained the error in making an initial demand of Rs.270/- for 3 supply of the information, which was promptly scaled down when the error was noticed. As such, there is no ground for any grievance in this regard.

12. On the original subject, the matter hinges on the decision on whether or not a public authority is required to provide to an applicant, a certificate that the information it has

provided to him is all that is there to be provided. The RTI Act, in Section 2(f), states the type of information an applicant can solicit from a public authority. In the normal course, information should be precise and directly point at a material, document, etc., which is to be provided to the applicant. He can also seek to inspect the documents, or a given file. In the latter case, the applicant need not clearly specify the nomenclature or number of the file. It will suffice if he mentions the subject-matter of the file, which will then be allowed, if admissible, for his inspection.

13. However, the scenario completely changes when the information solicited refers to every single item of information related with the subject with the use of prefix “all”. Unlike a file or a document, the reference here is to a whole range of information. It is quite possible that the understanding of what comprises such information differs from person to person. It is also possible that regardless of what the CPIO provides to an applicant the latter can still keep demanding or alleging that not everything was disclosed. The RTI Act, therefore, does not provide that a CPIO ought to give a certificate to an applicant that everything that he provided to the applicant exhausted the entire range of the information indicated by that applicant. The CPIO is required under the provisions of the RTI Act to provide “information” and not “certificates” about the completeness of that information. The appellant is clearly in the wrong in demanding such certificate to be provided to him by the CPIO.

14. I notice that in the present case, the CPIO has offered to allow the appellant to inspect the documents connected with the information requested. Rather than avail this offer, the appellant insists on receiving the information along with a certificate that nothing more is left to be given. This is a wholly irregular demand and cannot be met.

15. In consideration of all these matters, it is held that the AA was entirely right in holding that the CPIO was not required to supply such a certificate to the appellant.

16. The appeal is rejected.

Sd/-

(A.N. TIWARI) INFORMATION

COMMISSIONER

Authenticated by –

Sd/-

( D.C. SINGH ) Under Secretary & Asst. Registrar

**STUDY CASE NO-16** : [48] <sup>48</sup>

F.No.CIC/AT/A/2007/00017

Dated, the 28th March, 2007.

Appellant : Shri S.P. Goyal, Chand Temple of Peace, 2C & 3C,  
Sarabha Nagar, Ludhiana – 141 001.

Respondents : Shri Roshan Sahay, Director of Income Tax (Inv) & CPIO,  
Office of the Director of Income Tax (Inv), Ludhiana

Shri V.D.S. Balahara, Director General of Income Tax (Inv)  
& Appellate Authority, office of the Director General of  
Income Tax (Inv), Chandigarh.

1-The appellant, Shri S.P. Goyal has challenged through a second appeal before the Commission the order of the Appellate Authority (AA), Shri V.D.S. Balahara, Director General of Income Tax (Inv), which was dated 23.10.2006. The AA had upheld the order dated 20.9.2006 of the CPIO corresponding to the RTI-request of the appellant, which dated 18.8.2006.

2. A perusal of the RTI-request of the appellant made to the CPIO shows that it was mainly relating to inspection of all files connected with certain search and seizure operation carried out by the public authority against the appellant's "group concerns" (sic) and the correspondence he addressed to the various officers of the public authority in connection with that search and seizure operation. The appellant wants to have access

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<sup>48</sup> The Institution of company Secretaries Of India  
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ICSI House-22 Institutional Area, Lodi Road New Delhi 110003

to all the files connected with those operations against his “group concern” (sic) and his letters and telegrams addressed to the officers of the public authority. He has also demanded to know “how many total files you have of our group concerns regarding search & seizure action during October, 1993” and “please inform whether you are keeping all search and seizure files assessee-wise or for the group consolidated files.”

3. It needs to be mentioned at the very outset that this is one of a number of RTI requests which the appellant has been filing with the public authority for information on a matter connected with an investigation launched against “his group concerns” (sic). In similar appeals the Commission had decided that it was not open to the appellant to seek copies of the very letters he had addressed to the public authority — certified or otherwise, from that public authority. As the originator of that correspondence, he was the main custodian of that letter, which cannot be said to be held by or under the exclusive control of the public authority for the simple reason that the information was already accessible to the appellant himself.

4. The second part of his request is a demand to access files connected with search and seizures in his “group concerns” (sic) and the correspondence resting with the letters he was addressing to the public authority.

5. The CPIO and the AA have denied to disclose this information citing the exemption under Section 8(1)(j) of the RTI Act. In their view the information was personal to the appellant and his group concerns (sic) and have had no public purpose. In 2 their written submission to the Commission, dated 15.2.2007, the respondents have stated that the files requisitioned by the appellant contained information relating to the sources and informants of the public authority whose disclosure would be dangerous to the life and physical safety of such persons and sources.

6. In a similar case of the same appellant, in appeal no.CIC/AT/A/2007/00018, through its decision dated 26.2.2007, the Commission had observed as follows: “16. This Commission in normal course allows information about action on the petitions made by the citizens to the public authority to be disclosed to the citizens. But it also takes the precaution to ensure that these petitions are not without an element of public purpose in

them. The case of the appellant does not fall in that category. He is admittedly at the receiving end of law enforcement function by a public authority and has retaliated by writing a spate of letters to that public authority in connection with that act of law enforcement. In that sense, the public authority was wholly within its right in declining this information to him which was manifestly personal in nature and unconnected with any public purpose. The contention of the public authority is, therefore, upheld. 17. The denial of the certified copies of the letters written by the appellant himself to the public authority is also sustainable in law in so far as the appellant is himself the custodian and originator of those letters. These cannot be said to be in the exclusive control of or held exclusively by the public authority. There is no reason why the information which the appellant himself possesses should be supplied to him by the public authority.”

7. In view of the above, it is the considered view of the Commission in the present case as well that the exemption of Section 8(1) (j) is attracted to the information requested by the appellant.

8. The second point which the respondents have raised is exemption of Section 8(1)(g), which protects from disclosure information which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes. There is very little doubt that the information which the appellant has solicited pertains to law enforcement action by the public authority, i.e. the search and seizure operations. During all such operations, it is normal for such public authorities to receive confidential and guarded information from their informants or other sources. There is every reason to believe that disclosure of the documents and files containing such information may lead to inflicting avoidable injury on such informants as well as compromising their ability to effectively assist the public authority in its law enforcement function by bringing to its notice cases where law may have been violated. Routine disclosure of such information and permission to inspect records where information of this nature may be contained would compromise the very edifice of trust and confidentiality built over years between those providing information and those in the public authority receiving it. This relationship is critical to sub-serving a much larger public purpose, i.e. voluntary compliance with legal provisions by citizens



and effective action by the public authority against those found to be violating laws. The Commission has specially noted that nothing can be a more dangerous assault on that relationship, than allowing those being proceeded against for law-breaking to access the very documents and files which contain the material which forms the basis for initiating action against violation of law. This Commission will undoubtedly protect the right of every citizen regardless of his status or purpose to access information admissible under the RTI Act, but this general rule will perforce have to be modified, when a person at the receiving end of the law-enforcement seeks to subvert the process by invoking the freedom granted under the RTI Act to contrive to access vital information critical to that process. In such cases, the provisions of the law have to be strictly interpreted to make sure that larger public interest is not allowed to suffer.

9. In this particular case — and there are many such cases brought up by the same appellant, the Commission's conclusion is that he is not entitled to receive the information which he has solicited as it attracts exemption of Section 8 (1) (g) of the RTI Act.

10. The decision of the AA is, therefore, upheld and the appeal is rejected.

Sd/- (A.N. TIWARI)

INFORMATION COMMISSIONER

Authenticated by –

Sd/-

( NISHA SINGH ) Joint Secretary & Additional Registrar

Address of parties:

1. Shri S.P. Goyal, Chand Temple of Peace, 2C & 3C, Sarabha Nagar, Ludhiana –141 001.
2. Shri Roshan Sahay, Director of Income Tax (Inv) & CPIO, Office of the Director of Income Tax (Inv), Ludhiana
3. Shri V.D.S. Balahara, Director General of Income Tax (Inv) & Appellate Authority, office of the Director General of Income Tax (Inv), Chandigarh.

## **CHAPTER-5- CONCLUSION AND SUGGESTION**

**(164-171)**

**5.1-CONCLUSION**

**5.2-SUGGESTION**

## **5.1-CONCLUSION:**

It can be concluded that the New Direct Tax Code (DTC) can help the taxpayers to compute and file the Income Tax Returns without the help of tax consultant. The results of the study explain that the New Direct Tax Code System will help for the moderate relief to the assesses. The study concludes that the New Direct Tax Code System will reduce unnecessary exemptions. Based on the study, it can be concluded that the New Direct Tax Code (DTC) will help to collect more tax in future by EET Model,

Over the years, it is not only the taxation system but also the Income Tax Department and its rules that have undergone a number of organisational and regulatory changes. In keeping with the times, after the computerisation of the tax process, digitisation also took over, enabling taxpayers to access their tax statements from anywhere, through any electronic device.

Along with these changes, the Indian tax system has seen an increase in revenue collection, redesigned business processes and more improvement in tax-payer services.

India is a big country with people belonging to different communities and different wealth groups and income. Taxation to all cannot be the same. This is the reason for the tax system in India being a complicated one for long. India has been grappling with the problem of tax evasion which seems to be making our taxation system hollow from the core. India has a high tax rate but a low yield of direct taxes. So, over the years the government has made an attempt to reduce the taxes. Also, for a nation to prosper its tax collection system has to be strong and efficient even if the tax rates are not high else its coffers will be depleted and developmental programs truncated. One of the biggest problems faced by India's taxation system is the power of the government to make retrospective amendments regarding the tax statues. The practice began with the judgment given by the supreme court in the case of Chhotabhai Jethamal Patel & Co v. UOI & Others after which an amendment bill was passed for retrospective levy of excise duties.

After the implementation of the GST which is an all-inclusive indirect tax, the process has become smoother and helped prevent the cascading effect it had earlier. The Constitution of India has provisions with respect to the distribution of financial resources

under chapter two of part twelfth which is in rhythm with the Federal, State and Concurrent list under 7th Schedule. To sum up, the Parliament rights are not bound and the Indian Constitution gives wide powers to the Parliament and it is neither rigid nor the same. So, according to future needs, there are provisions that can change the said rules of law. Paying taxes may not be the best task, however, it pays for all the development and infrastructure that one enjoys.

Rather than assuming that income tax is a burden, citizens should contribute to the progress of a nation by paying income tax. The general population should endeavor to comprehend the significance of income tax and the perceived role their money plays in the country's growth. As a responsible citizen, one must always pay their income tax on time because it is only via tax payments that our country can stay up with other industrialized nations and progress further. If people begin to perceive income tax as a hardship and avoid having to pay it, our nation's growth will suffer, as would social disintegration so in order to avoid the same paying of income tax on time is consequential.

The present study is concerned with three direct taxes, namely, the income-tax, the wealth-tax and the gift-tax.

It is uncertain as to which type of tax is better - direct or indirect - because both have merits and demerits. As a matter of fact, there should be a proper blend of direct and indirect taxes in a good tax system. In developed countries, more emphasis is laid on direct taxes while in developing countries, the indirect taxes receive greater attention from the authorities. It may be pointed out that indirect taxes have a special role to play in developing countries, which are determined to achieve a faster rate of growth. Direct taxes taken alone cannot provide the requisite financial resources to the Government.

Direct taxation is only one of the several factors that affect the volume of savings and investments. In developing countries, the real issue may be at making a choice between the public and private investment. Investment in public sector involves a transfer of resources from private sector, mainly via direct taxation which may be said to have an impairing effect on private investment.

About the role of direct taxes in the Indian tax structure, it has been attempted to study the direct tax trends both in the Pre-Plan period as well as during Plan periods, from which it is obvious that the revenue from direct taxes has been declining in recent years. The declining trend in the percentages of direct taxes revenue of the Union and the States to the total revenue is also visible from the data analysed.

The study of tax design and tax reform in order to be more useful in practical applications, should encompass economic, legal and administrative aspects. Tax design is concerned with designing a tax or tax structure de novo, whereas tax reform is concerned with the existing tax or adopting a tax structure to changed circumstances. Tax reforms includes introducing changes in the existing tax-base, tax-rates, taxes exemptions, concessions and the administrative procedure.

In modern public finance, an appropriate tax structure for achieving diverse socio-economic objectives, besides serving as a source of revenue, needs to be formulated. In India, different tax-rate schedules are applied for corporate and non-corporate assesseees. The income-tax rate structure in India due to these factors has undergone a series of changes over the last 25 years. The tax-rates, tax-slabs all have been frequently changed during the period from 1962-63 to 1994-95.

Not only the exemption limits and income brackets (in which income is divided for tax purposes) are important in determining the incidence of tax on a person, but also the rate at which income falling within different income brackets, affects the taxpayers. Although the actual incidence of tax is often much different from the scheduled rates, the rate schedule prescribed for taxing different parts of income has its impact on personal incentives to work and to save.

The Income-tax Act, the Wealth-tax Act and the Gift-tax Act provide a number of exemptions, incentives, deductions and allowances linked with various purposes, which are important for the socio-economic development of the country. Some of the exemptions are given to encourage the savings and investments in desired channels in providing funds for nation-building activities.

Several critics of the tax reform programme in India have tended to judge the success or failure of the programme in terms of increases in revenue that the reform has brought about. Adequacy of increase is measured in terms of revenue to GDP ratio. To be sure, one of the objectives of tax reform is to improve revenue elasticity and the tax ratio. However, it should be remembered that the impact of the reform on revenue increase will not be immediate; tax compliance will increase with reduction in rates only gradually. Similarly, improvements in tax enforcement will take time. It has been emphasised in the Report of the Tax Reforms Committee that mere reduction in rates would not lead to an increase in compliance and that stricter enforcement, which becomes easier with rate reduction, is a necessary complementary step. Secondly, the growth in revenue is not to be measured only by the tax ratio. A major objective of the tax reform is to facilitate and promote faster growth of the economy. What is needed is not an immediate increase in the tax ratio but a faster growth in revenue arising from a higher growth rate of the economy. With an elasticity greater than one, in course of time, the tax ratio will rise. It could be said with some confidence that the tax system has been reformed in India significantly enough to facilitate a higher rate of growth.

It must be admitted, however, that the structural reform is far from complete, although quite a bit of ground has been covered in a short period of three years. Again, there has been only slow progress in the reform of the tax administration. Tax policy makers and tax administrators will have their hands full in the coming years

## **5.2-SUGGESTION:**

The main recommendations on direct taxes relate to raising of exemption limit of personal income tax, rationalization of exemptions, abolition of concessional treatment to long-term capital gains, abolition of wealth tax, etc.

How can we improve taxation system in India? Some points are given bellow.

1. Basic exemption limit and rebate .
2. Removal of new regime U/S 115 BAC.
3. Rationalise tax rate in case of individuals/HUF.
4. No new Vs old rate.
5. Only one set of tax rate slab.
6. No standard deduction of Rs.50000 to salaried\pensioners as increase in basic exemption limit
7. The New Direct Tax Code (DTC) can help the taxpayers to compute and file the Income Tax Returns without the help of tax consultant, so it will soon imply new tax code system.
8. The New Direct Tax Code (DTC) will help the taxpayers for moderate relief, so it will be introduced early.
9. The New Direct Tax Code (DTC) will help to reduce unnecessary exemptions hence, Income Tax Act, 1961 should be replaced by New Direct Tax Code (DTC).
10. The New Direct Tax Code (DTC) will help to collect more tax in future by EET Model, so it will be introduced soon new tax code system

Having reviewed the major conclusions relating to the present study and after going through the major recommendations of various Committees and Commissions appointed by the Government of India for the express purpose of introducing certain direct tax reforms, the following suggestions emerge out of the present study.

Improving the fairness of direct-tax system needs to be paid priority attention; in other words, instead of increasing tax-rates, it is advisable to identify new areas, through which exercise, it is possible to distribute the burden of taxation on to some more eligible people. The fiscal policy has necessarily to be aimed at creating a climate which would allow an ample use of direct taxes in the long run.

The tax structure in India, in general, is overly complicated and an average assessee cannot easily comprehend the statutory provisions. This is a general opinion about the overall tax structure so far as the direct taxation procedure in the country is concerned. This confusion is more profound as there are a number of divisions and sub-divisions of the taxable entities and the tax-rates for each of them are different. Moreover, the rate structure is not uniform; consequently, tax-rates are not determined on scientific basis but are fixed arbitrarily.

Comparatively higher tax rates prevalent in the country's tax system tend to encourage tax evasion and discourage the spirit of mutual cooperation between the taxpayers and the tax collectors. The reduction in tax-rates holds the potential of offering an alternative solution to the problem of tax evasion.

The Government had appointed Chelliah Committee to examine the structure of direct taxes and recommend suitable modifications for making the tax system more broad-based, elastic and simplified. The Committee had suggested the following:

- (a) Raising the exemption limit of income-tax and reducing the tax rates on different income slabs with maximum marginal rate of 40% above Rs.2.0 lakh;
- (b) Withdrawal of exemption to various saving instruments like NSCs, equity-linked saving plans,

Introduction of presumptive tax scheme for small shopowners and traders whose annual turnover falls between Rs.3.0-5.0 lakhs;

Introduction of 'estimated income scheme' for the people engaged in brokerage business or working as commission agents. Exemptions are rather important aspect of the direct-taxes, because these facilitate balanced economic growth, promote export trade,



advancement in science and technology, accelerate the rate of saving, investments, production and capital formation, promote education, sports, cultural and social amenities, etc.

On the whole, the process of 'un-completing' the country's direct tax structure has picked up particular momentum during last four fiscal years, on the lead taken by Dr. Manmohan Singh, the Union Finance Minister. His Budget speeches reflect an earnestness of purpose in this behalf. Still, much needs to be done to make the tax structure truly responsive to country's fiscal needs. Broadening the tax base is just one of the measures. Other potential areas are:

- (1) Simplified and taxpayer-friendly tax administration:
- (2) Streamlining of tax-rates and tax-slabs for their easy comprehensibility to the taxpayers;
- (3) Simplifying 'exemptions and deductions' to an extent that lay taxpayers can understand them easily;
- (4) Formulation of a single Direct Tax Code bringing together all present (and also the future) direct tax provisions. With the opening of the economy to global forces of competition, it is imperative that the direct tax structure too needs to impart dynamism, so as to fulfil Government's development objectives and people's welfare aspirations

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Directorate of income tax

Mayur Bhawan New Delhi 110001

Published – Taxmann Publication (P) Ltd.

21/35 West Punjabi Bagh New Delhi 110026

[ Section -15 ,Income tax Act 1961

Salaries. The following income shall be chargeable to income-tax under the head “Salaries”—

(a) Any salary due<sup>84</sup> from an employer or a former employer to an assessee in the previous year, whether paid<sup>84</sup> or not;

(b) Any salary paid<sup>84</sup> or allowed<sup>84</sup> to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

(c) Any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year]

### **2- Income tax Book**

Assessment Year 2023-24

Written by- Raj K. Agrawal

Publication- Bharat Publication New Delhi.

Capital Gain exempt u/s 54GB earlier would be taxed if:

A-Assessee transfers his shareholding in the start up company within a period of 5 year from the date of acquisition.

B-The said company does not invest the amount in new asset before due date of filing ROI.

C-The said company transfers the new asset acquired within a period of 5 year from the date of acquisition.

### **3- Direct Tax Law and Practice :**

By- Dr.Vinod K. Singhania

Dr. Kapil Singhania

Date of Publication in October 2020

Published – Taxmann Publication (Pvt.) Ltd.

[Dr. Vinod K. Singhania got his PhD from the Delhi School of Economics in 1976.

His field of special interest includes all facets of corporate legislation and corporate economics, especially tax laws.

Section 45(2A) Income Tax Act 1961 **Capital Gain on transfer of securities**

1-Where any person had at any time during previous year.

2-Any beneficial interest in any securities.

3-Then profit and gains arising from transfer made by depository, of such beneficial interest.

4- Shall be chargeable under capital gains in previous year of transfer.

### **4- Direct Tax Law and Practice :**

The Institution of company Secretaries Of India

Under the Jurisdiction of Ministry of corporate affairs

ICSI House-22 Institutional Area, Lodi Road New Delhi 110003

[Section 64(1)(ii)Income tax Act 1961 Income of Spouse :- All such income as arises directly or indirectly , to the spouse of an individual by way of salary ,commission, fees or any other remuneration , whether in cash or kind from a concern in which such individual has a substantial Interest . shall be included in the income of individual.]

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1 January 2019

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T-1/95, Mangolpuri Industrial Area, Phase-I New Delhi-110 083

Phones: 27910001-03 Mobiles: 98103 74369; 98102 67553

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12<sup>th</sup> Edition 2023

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By:- Rav Pratap Singh & Hon'Ble Justice Hemant Gupta

8<sup>th</sup> Edition 2021

OakBridge Publishing Pvt. Ltd. M-35, 1st Floor, Old DLF, M.G. Road, Gurugram-

122001 Haryana, India. Tel.: +91 124 4305970. info@oakbridge.in

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By Srinivasan Anand G

2019 Eddition Date of Publication is February 2019

Taxmann Publication Pvt Ltd Delhi

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By- Pro. (Dr.) Rattan Singh

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60<sup>th</sup> Edition , March 2023

By Taxmann(Author)

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Dr. Monica Singhania

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A POSITIVE REFORM FOR INDIRECT TAX SYSTEM

Akanksha Khurana<sup>1</sup>, Aastha Sharma<sup>2</sup>.

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(<http://creativecommons.org/licenses/by/4.0/>)

A study on income tax deduction and opinion in india WILLIAM ROBERT. P1 ,

By: ABINASH

**10-. Research Scholar, Department of E.A.F.M., University of Rajasthan, Jaipur.**

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## **ANNEXTURE:**

Calculate the income as per the provisions of respective heads of income. Section 14 classifies the income under five heads

- (i) Income from salaries (only to be consider for individual)
- (ii) Income from House Property
- (iii) Profits and gains of business or Profession
- (iv) Capital Gain
- (v) Income from other sources

### **FORMAT FOR THE CALCULLATION OF INCOME TAX:**

Particulars	Amount(Rs.)	Amount(Rs.)
Income from salary		
Salary		Xxxxx
Allowances received (Taxable allowances)	Xxxxx	
Taxable Value of perquisite	Xxxxx	
Gross Salary		Xxxxx
Less: Deduction under section 16		
Professional Tax	Xxxxx	
Entertainment Allowance	Xxxxx	
<b>Income from Salary (1)</b>		Xxxxx
Income from house property		
Adjusted net annual value	Xxxxx	
Less : Deduction under Section24	Xxxxx	
<b>Income from house property (2)</b>		Xxxxx
Profit and gains of business and profession		
Net profit as per profit and loss account		Xxxxx



Add:- Income which are debited to profit and loss account but not allowable as deduction	Xxxxxx	
Less:- Expenditure which are not debited to profit and loss Account but allowable as deduction	Xxxxxx	
Less:- Income which are credited to profit and loss account but are Exempt under section 10 or taxable under any other head of income	Xxxxxx	
Add:- income which are not credited to profit and loss account but Are taxable under the head “ profit and gains of business or profession	Xxxxxx	
<b>Profit and gains of business and profession (3)</b>		Xxxxxx
Capital gains		
Amount of capital gain	Xxxxxx	
Less:- amount exempt under section 54 to 54H	Xxxxxx	
<b>Capital gain (4)</b>		Xxxxxx
Income from other source		
Gross income	Xxxxxx	
Less:- Deduction under Section 57	Xxxxxx	
<b>Income from other source (5)</b>		Xxxxxx
<b>Total income (1+2+3+4+5)</b>		Xxxxxx
Less:- Adjustment on account of setoff and carried forwarder of Losses		Xxxxxx
Gross total income		Xxxxxx
Less:-Deduction under section 80C to 80U		Xxxxxx
<b>Total income (Income liable to tax)</b>		Xxxxxxx

Computation of tax liability		Xxxxx
Tax on net income		Xxxxx
Less:-Rebate under section 87A		Xxxxx
Balance		Xxxxx
Add: Surcharge		Xxxxx
Tax and surcharge		Xxxxx
Add:- Education Cess and secondary and higher education Cess		Xxxxx
Less:-Rebate under section 86,89,90, 90Aand 91		Xxxxx
Tax		Xxxxx
Less:- Prepaid taxes		Xxxxx
Tax paid on self assessment		Xxxxx
Tax deducted or collected at source		Xxxxx
Tax paid in advance		Xxxxx
Tax liability ( Round off)		

### **Income tax slabs and rates :[49]<sup>49</sup>**

The income tax rates are proposed by the Union Finance Minister along with the Union Budget 2019-20 stands as follows:

- a) Individual (resident or non-resident), who is of the age of less than 60 years on the last day of the relevant previous year:

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<sup>49</sup> The Institution of company Secretaries Of India  
Under the Jurisdiction of Ministry of corporate affairs  
ICSI House-22 Institutional Area, Lodi Road New Delhi 110003

Assessment Year 2013-2024	
Net income range	Income-Tax rate
Up to Rs. 2,50,000	Nil
Rs. 2,50,000- Rs. 5,00,000	5%
Rs. 5,00,000- Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

b) Resident senior citizen, i.e., every individual, being a resident in India, who is of the age of 60 years or more but less than 80 years at any time during the previous year:

Assessment year 2023-2024

Net income range	Income-Tax rate
Up to Rs. 3,00,000	Nil
Rs. 3,00,000- Rs. 10,00,000	5%
Rs. 5,00,000- Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

C- Resident super senior citizen, i.e., every individual, being a resident in India, who is of the age of 80 years or more at any time during the previous year:

Assessment year 2023-2024

Net income range	Income-Tax rate
Up to Rs. 5,00,000	Nil
Rs. 5,00,000- Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

D-Hindu Undivided Family (Including AOP, BOI and Artificial Juridical Person)

Assessment year 2023-2024

Net income range	Income-Tax rate
Up to Rs. 2,50,000	Nil
Rs. 2,50,000 to Rs. 5,00,000	5%
Rs. 5,00,000 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

Surcharge: Surcharge is levied on the amount of income-tax at following rates if total income of an assessee exceeds specified limits:-

Rate of Surcharge Assessment Year 2023-24

Rate of Surcharge				
Range of Income				
Rs. 50 Lakhs to Rs. 1 Crore	Rs.1 Crore to Rs. 2 Crores	Rs. 2 Crores to Rs. 5 Crores	Rs. 5 crore s to Rs.10 Crores	Exceedin g Rs. 10 Crores
10%	15%	25%	37%	37%

Note:

1) The enhanced surcharge of 25% & 37%, as the case may be, is not levied, from income chargeable to tax under sections 111A, 112A and 115AD. Hence, the maximum rate of surcharge on tax payable on such incomes shall be 15%.

2) From Assessment Year 2023-24 onwards:

o The maximum rate of surcharge on tax payable on dividend income or capital gain referred to in Section 112, shall be 15%.