

WORKING PAPER

PROJECT: Administrative Procedure

SUBJECT: Income-tax

PRELIMINARY OBSERVATIONS

THE problem in the field of administrative procedure of Income-tax authorities is how to ensure justice to the assesseees without in any manner jeopardising the interests of the revenue. When the decision to take up this subject for study was made in the middle of October last it was noted with satisfaction that the Government had appointed a Committee to advise on the administrative organization and procedures necessary for implementing the integrated scheme of direct taxation. Nevertheless it was felt that an independent organization like the Indian Law Institute could make useful contribution by an objective appraisal of the existing procedure in the field of income-tax and suggest useful reforms, if any are necessary.

PLAN OF WORK

The study is broadly divided into (i) assessment (ii) appeals (iii) revision (iv) collection and recovery and (v) refunds.

Any useful inquiry into the above areas can be made only by intensive field work with the co-operation of Income-tax practitioners, Chartered Accountants, assesseees and the Income-tax Department. The experience of assesseees at various levels and the specialist in the field of income-tax has to be focussed not only to make an objective evaluation of the existing procedure, but also to find out new approaches to practical problems. A general questionnaire on administrative procedure has been widely distributed and a special questionnaire on income-tax spotlighting the important areas of study is under preparation. The final conclusions and recommendations will be entirely based on the data collected by way of field work.

NATURE OF THE WORK DONE AND THE AREAS OF INVESTIGATION THAT HAVE EMERGED

A preliminary analysis of the procedure regarding assessment, appeals and revision has been made with special reference to the Statute and the Rules. The study reveals that the following areas deserve special attention. The questions raised below in the respective areas are purely tentative and deserve further scrutiny and discussion.

ASSESSMENT

(1) An important area in the field of assessment is the power conferred on the Income-tax Officer to make a best judgment assessment. Section 23(4) empowers the officer to make an assessment to the best of his judgment if any person fails to make a return in response to a notice under section 22(2) or fails to comply with all the terms of a notice issued under sections 22(4) and 23(2). Section 27 provides for cancellation of such an assessment when cause is shown.

There is no duty cast on the officer to give the person prior to the assessment an opportunity to explain his failure to make the return or non-compliance with the notices. The default on the part of the assessee may not in most cases be deliberate. There is an element of danger in best judgment assessments and it is possible that the assessment order may be for much more than the tax actually due. There is also the danger that when once the assessment is made the Income-tax Officer may be reluctant to re-open the assessment on a petition under section 27. In view of these circumstances, would not an opportunity to show cause prior to the actual assessment help considerably in removing the element of arbitrariness in best judgment assessments?

(2) Another problem regarding the assessment procedure is presented by section 13. This section gives the Income-tax Officer power to reject the method of accounting adopted by the assessee if the income, profits and gains cannot properly be deduced therefrom and adopt his own method for the purpose of making the assessment.

The majority of small assesseees and retail dealers will find it impossible to maintain their accounts in accordance with the accepted principles of accountancy and accounts are liable to be rejected as unreliable even when the defect is only minor. The problem has to be viewed from different angles, viz.,

- (i) difficulties of small assesseees in keeping accounts in conformity with the rules of accountancy;
- (ii) inexperience of Income-tax Officers in book-keeping and accountancy; and
- (iii) the advisability of relaxing strict scrutiny of accounts in the case of small assesseees when the tax imposed is not material from the point of view of the revenue.

In this area the following questions should be considered:

- (i) Should not the Department get in touch with trade and professional associations with a view to finding out the reasonable way of maintaining accounts in a particular trade or profession?
- (ii) Should not the assessee be given an opportunity to explain the method of accounting adopted by him?

(3) Section 57 states that the Director of Inspection, the Commissioner or the Inspecting Assistant Commissioner may issue instructions for the guidance of the Income-tax Officer subordinate to him in the matter of any assessment.

The instructions given by the superior officers are likely to result in decisions unfavourable to the assessee being taken without his being given an opportunity to rebut the premises on which they are based. It may not be possible to isolate the Income-tax Officer who combines in him both administrative and *quasi-judicial* functions from the administrative machinery. Nevertheless, it will be useful to inquire to what extent he can be freed from interference by superior officers in the assessment work.

APPEALS

Besides an inquiry into the actual adjudicatory procedure followed in the exercise of appellate jurisdiction, the following deserve special attention:

(1) Section 35 empowers the Appellate Tribunal, the Appellate Assistant Commissioner and the Income-tax Officer to rectify mistakes apparent from the record of the appeal, revision, assessment or refund within four years from the date of the order. These orders are not appealable under the Act nor is there any provision for reference to the High Court from the order of the Appellate Tribunal.

Though the section provides for an opportunity of being heard if the rectification results in enhancing an assessment or reducing a refund, it has to be considered whether the subject-matter covered by section 35 is not important enough to warrant a right of appeal and also a reference to the High Court on a question of law.

(2) An order of the Income-tax Officer cancelling the registration of a firm under Rule 6-B is not appealable under the existing scheme. The Rule states that if the Income-tax Officer is satisfied that the certificate of registration has been obtained without there being a genuine firm in existence he may cancel the certificate.

While refusal to register a firm and an order of cancellation of registration following a best judgment assessment under section 23(4) are appealable, there does not seem to be any reason why an appeal should not lie from an order of cancellation under Rule 6-B.

The Rule does not provide for any notice to the assessee before an order of cancellation is made. Whether in practice such notice is given or not it has to be considered whether the Rule itself should not provide for notice and hearing.

(3) The members of the Appellate Tribunal are now appointed by the Central Government and are under the administrative control of the Ministry of Law.

The control exercised by the Government over the members of the Tribunal in matters of promotion, transfer, etc. can jeopardize the independence expected of the Tribunal. The real problem is how to give the Tribunal the degree of independence necessary in the discharge of its appellate functions.

There is a suggestion in some quarters that the members of the Tribunal should be of the status of Judges of the High Court. One possible

difficulty in implementing this suggestion, apart from the financial implications involved, will be in the composition of the Tribunal every branch being composed of an accountant member as well as a judicial member. The nature of the functions exercised by the Tribunal cannot be equated to the functions exercised by the High Courts and to give the Tribunal the status of High Courts will mean direct reference on questions of law to the Supreme Court.

The following suggestions can be considered:

- (i) The members of the Tribunal should be appointed by the Supreme Court and should be under its administrative control.
- (ii) The conditions of service of the members of the Tribunal should be improved to attract the right type of men.

(4) A detailed study has to be made as to what extent the existing administrative control exercised by the Central Board of Revenue over the Appellate Assistant Commissioners interferes with the exercise of independent judgment in the appellate work of the latter. If it does interfere with their freedom to an appreciable extent, what is the remedy?

One possible solution to ensure judicial outlook in the Appellate Assistant Commissioner is to place him under the administrative control of the Appellate Tribunal and thus to secure his independence from any possible departmental influence. This will be one of the practical safeguards, under the existing circumstances, against arbitrary assessments by the Income-tax Officer.

REVISION

An area which deserves special attention is the revisional jurisdiction exercised by the Commissioner under section 33-B of the Act.

Section 33-B deals with the power of the Commissioner to revise the orders of Income-tax Officers in so far as they are prejudicial to the interests of the revenue. Apart from providing that the assessee should be given an opportunity of being heard the section does not prescribe any particular procedure to be followed by the Commissioner in the exercise of this revisional jurisdiction. It is a matter for enquiry as to what exactly is the nature of the opportunity given to the assessee and also whether the assessee should be given any statutory procedural safeguards.

AREAS OF FURTHER STUDY

1. Section 46(2) empowers the Collector to recover the arrears of income-tax as land revenue.

An important problem is how to bring about uniformity in procedure regarding recovery of income-tax. For example, the Madras Revenue Recovery Act (Act 11 of 1864) provides that when arrears of revenue cannot be liquidated by the sale of the property of the defaulter and the Collector has reason to believe that the defaulter is wilfully with-

holding payment of the arrears the Collector can cause the arrest and imprisonment of the defaulter. No person can be imprisoned for a longer period than two years, or for a longer period than six months, if the arrear does not exceed Rupees five hundred or for a longer period than three months if the arrear does not exceed Rupees fifty. But under the Bombay Land Revenue Code, 1879, the defaulter may be arrested and detained in custody at any time after the arrears became due and no person can be detained in imprisonment for a longer period than the time limited by law in the case of execution of a decree of a civil court for a debt equal in amount to the arrear of revenue due. Under the Bombay City Land Revenue Act, 1876, arrest and detention can be made only if the sale of the defaulter's property does not satisfy the demand. While both Bihar and Orissa Public Demands Act, 1924, and the Punjab Land Revenue Act, 1887, provide that a defaulter may be arrested and detained any time after the arrears of land revenue have become due they provide for different periods of detention. The period under the Bihar and Orissa Act is six months for a demand exceeding fifty rupees and for six weeks in any other case. In the Punjab the revenue officer can keep the defaulter under personal restraint for a maximum period of ten days and if the arrear is still unpaid the Collector can confine him in jail for a period not exceeding one month.

The result of the difference in procedures in different States is that the assesseees are subject to varying procedures in the implementation of the same Central Statute. In this connection, the advisability of having a Central Revenue Recovery Code as mentioned by the Direct Taxation Enquiry Committee in its questionnaire can be considered.

2. Arrears of assessments and refunds.

Statistical data regarding pending assessments and refunds are not yet available. If there is a large number of assessments and refunds pending the reasons therefor have to be investigated, with a view to eliminating delays which cause unjustifiable inconvenience to the assesseees. The administration of the other direct taxes by the Income-tax Department may have considerable bearing on this problem.

3. The present practice is that the Income-tax Officer has to make the assessment in most cases. It is worth-while considering whether it is feasible to introduce the system of assesseees themselves computing the tax payable by them, especially within the small income groups. It is noteworthy that for the periods 1955-56 and 1956-57 though the assesseees with income below Rs. 10,000 were nearabouts 3,90,571 their contribution was only 7.8 crores or 4% of the total tax. Another notable feature is that for the same period though 86% of the assesseees were individuals they accounted for only 40% of the total tax.

