TAX MANAGEMENT AND PLANNING

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CHAPTER 1 An auditors' role in Tax Management

1.1 Who is an Auditor?

The word "auditor" is used in this booklet not in any narrow sense but as a person, who is qualified to be an authorised representative under section 288 or a person in full-time employment with sole responsibility for tax compliance by the assessee. It will include not only a Chartered Accountant, but also a lawyer, a tax practitioner, a tax consultant, a tax manager or an executive. Section 288(2) of the Income-tax Act lists the authorised representative as under:

"For the purpose of this section, `authorised representative' means a person authorised by the assessee in writing to appear on his behalf, being--

(i) a person related to the assessee in any manner, or a person regularly employed by the assessee; or

(ii) any officer of a Scheduled Bank with which the assessee maintains current account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practise in any civil court in India; or

(iv) an accountant; or

(v) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(vi) any person who has acquired such educational qualifications as the Board may prescribe for this purpose; or

(vii) any person who, before the coming into force of this Act in the Union Territory of Dadra and Nagar Haveli, Goa, Daman and Diu or Pondicherry, attended before an income-tax authority in the said territory on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee; or

(viii) any other person who, immediately before the commencement of this Act, was an income-tax practitioner within the meaning of clause (iv) of sub-section (2) of section 61 of the Indian Income-tax Act, 1922 (1 of 1922), and was actually practising as such."

An erstwhile Government employee who has been dismissed or removed, or anyone, who has been convicted of an offence connected with income-tax proceedings or on whom penalty has been imposed under the Act other than penalty imposed on him under clause (ii) of sub-section (1) of section 271 or who has become insolvent, will not be entitled to be an authorised representative.

Section 288(5) gives power to disqualify any authorised representative for misconduct and persons so disqualified will not be entitled to represent any taxpayer thereafter. Such an order of disqualification is, however, subject to appeal before the Central Board of Direct Taxes.

1.2 An auditor's role as advisor

An auditor for the purpose of this booklet will include all persons who undertake responsibility for tax compliance by his client, whether he is a Chartered Accountant, income-tax practitioner or a tax lawyer. It may well include a tax-executive in sole charge of his employer's affairs. He plays an important role, because he is often a philosopher, friend and guide. He is a consultant even on most basic matters not only relating to his business but even for his personal affairs. Where the accounts maintained do not meet the tax requirements, the taxpayer is often likely to blame the auditor for not having guided him properly. He may not always accept the advice that is given to him, but is bound to complain if such advice had not been given to him in time. Even where such advice has been given in time, he may still complain that the seriousness of disregarding such advice was not explained.

1.3 Areas where briefing may be necessary

It is his role as an advisor that makes it necessary for the auditor to brief the assessee on the following matters:

(i) Choice of taxable entity--the various implications of doing business as a proprietor, firm or company.

(ii) The kind of accounting that is required to be maintained including the method of stock valuation in the light of several accepted accounting principles and Accounting Standards prescribed under section 145 of Income-tax Act, 1961, and the impact of section 145A in stock valuation.

(iii) The rights which he has, when he is subjected to search or survey.

(iv) The obligation which he has and also the time limit for compliance with such obligations as regards advance tax, filing of return, payment of self-assessment tax, compliance with notices, etc., as regards his tax liability.

(v) The other obligations as in matters like tax deduction at source (TDS) and requirements for crossed or account payee cheque in respect of his transactions.

(vi) Right to rectification, revision, appeals, stay of disputed demand, etc., in the event of an adverse order.

(vii) Right to advance ruling, right to apply for settlement with the Settlement Commission, right to waiver of interest before the Chief Commissioner, and right to relaxation of conditions or time limit before the Central Board of Direct Taxes.

An auditor's role is not limited to mere preparation of return, filing and representation thereafter. He has to educate himself and in turn educate his client. He himself has to be update with development of law and brief his client either by periodical conferences or circulars or preferably by reminding him of his duties and consequences which will follow failure to comply with them.

1.4 An auditor's office should be properly equipped

An auditor should be properly qualified and entitled to practice by virtue of his fulfilling the requirements of the tax laws as well as the discipline of his own profession. He should have a minimum library stacked with updated texts of law and standard commentaries besides tax reports and periodicals so as to inform himself of day-to-day developments as regards amendments to law and rules, notifications and circulars. Importance of adequate library was stressed by Justice Bernard Ryan, when he said : "It is not so much in knowing the law, as in knowing where to find the law". If he has exposure to study circles, seminars and discussions with his own professional colleagues, he is likely to acquire greater competence to tackle problems expected of him. He should develop communication skill to put across his own point of view to his client's and his client's case effectively before authorities. He should have adequate office space to meet clients to secure confidentiality while dealing with them. He should have adequate clerical assistance for proper maintenance of files and to attend to routine matters.

1.5 Designing control system

It is necessary that he should be able to devise an internal control system for his clients, which is useful and serves as a warning signal as to any departure from the requirements of law. He has to advise them as to the rules regarding compulsory maintenance of accounts and also on matters on which he will be called upon to answer in matters specifically brought to his notice in a tax audit report under section 44AB.

1.6 Tax reduction or tax costing

Tax avoidance has come to some disrepute as anti-social, unethical and even illegal. Since the artificial tax devices are to be shunned, the need is increasingly felt for safer and a non-controversial course of ensuring tax mitigation by availing benefits of tax incentives and avoiding interest and penalties for non-compliance by organising proper tax management to reduce the tax cost. Reduction of tax cost through a proper tax management may best be described as tax costing. Since organisation of a tax costing department as part of a system of internal control and internal audit, it is suggested, should be an object, it will be relevant to define tax costing as:

"Tax costing is a management concept involving tax analysis. It is an exercise by which tax cost or tax gain in respect of every possible choice is ascertained with a fair degree of precision notwithstanding possible enhancement in tax rates and controversial legal interpretations. Tax costing includes all steps to ensure proper execution of business decisions by strict observance of all legal formalities, adhering to time limits for compliance and ensuring adequate documentation to avoid adverse administrative inference from tax collectors. Tax costing involves planning at a stage much anterior to profits unlike avoidance or evasion which involves artificial or colourable devices after final or at very near end-stage of taxable event."

The management system should have an in-built setup on a continuous basis to see that tax cost is not neglected. Tax saved can be many times the cost of service.

1.7 Need for tax costing

The need for the tax department and the further necessity of monitoring and checking the functioning of the tax department in the organisation to ensure that the tax obligations are complied with a minimum of friction is recognised in all large companies. In an article on tax management by Dean J. Barron included in the Encyclopaedia of Professional Management, he says that the first object is to see that there is proper compliance in "no-win areas". He describes this concept as under:

"The `no-win' area means that failure to comply can result only in disservice to the corporation; there can be no real benefits. Examples are failure to file required returns, failure to meet advance payment requirements, failure to make timely elections and failure to properly execute tax and related forms they will process through the IRS data processing system. Not only are interest and penalties significantly high for these kinds of failures, but the resulting deluge of computer-generated correspondence will be time-consuming and can result in compounding the error."

Writing about the situation prevailing in the United States of America, he refers to the staggering filing requirement by a corporate entity in municipalities, townships and cities besides the States in which the corporation has activity apart from obligations to the Federal Government. Is not the situation similar in India? Income-tax and central excise levied by the Central Government, sales tax in as many states where there are operations, besides other levies by the local Government like entry tax, octroi, property tax, profession tax and various licence fees are some of the obligations to which a company renders itself liable in course of its business.

1.8 Calendar for compliance

There should be a calendar incorporating various date lines for compliance, with another set of date line giving a margin time to get prepared for compliance by the due date so as to serve as an alarm signal to avoid default. Some specimen calendars form appendices.

The tax management is not confined to mere compliance with law. Options have to be exercised in time to avail incentives, as for example, to claim exemption under section 10A or 10B of the Income-tax Act in India. Enlightened self-interest requires figures and records for protection of corporate rights "with necessary disagreeing without being disagreeable". Very often tax liability hinges upon shifts of income or deductions between the years. A deduction failed to be claimed may not only get postponed but even may be lost altogether.

It is always necessary to ensure proper contemporaneous documentation for every thing that is done so that one does not have to prepare vouchers, agreements, etc., belatedly with the result that even genuine payment takes on an appearance of bogus claim because of the fabricated evidence. In this context the warning of Dean J. Barron to corporate executives in USA is relevant:

"Some managers, however, may obtain an erroneous idea that the sophisticated way to handle a difficult issue is through bribing the agent. To those, we can say that even the amoral are deterred with the risk of detection is substantial. Regardless of whether it seems to have worked in the past, or the agent seems receptive, such a course should never be adopted. Entertainment of the agent(s), even in modest ways, is prescribed by the IRS."

It is very unfortunate that many clients think that what matters is whom you know rather than what you know. As warned, it is a game with short-term gains in US and it is so in India as well. Law is bound to catch up sooner or later.

1.9 Timely tax payment

Great stress has also been laid in US on the need of timely payment of tax in respect of what is characterised as "depositor responsibility" with a view to avoid the penalties and interest. Taxes in India have to be paid either as advance tax in three (four) instalments, tax deduction at source from every disbursement including payments to contractors, tax collection at source in respect of some transactions under section 44AC, self-assessment tax along with the return or as direct levies made by the Assessing Officer under different sections from time to time either by way of intimation or normal demand or demands consequent on rectification, revision and re-assessment. These are required to be monitored and a watch on compliance on due dates should necessarily be made the responsibility of an individual, and, in a large organisation that of internal audit department in order that serious pecuniary losses, apart from other consequences for omission or delay are avoided.

1.10 Presentation of accounts

Income under the Income-tax Act is computed in accordance with ordinary principles of commercial accounting, subject, of course to what has been specifically granted or disallowed by the Act. Even where accrual system is mandatory, there may be some choice left, whether it be on method of inventory valuation or the system adopted for revenue recognition. Making adequate provision for potential liability like warranty claims would reduce the tax cost.

Any qualification or notes on accounts likely to have tax impact needs to be carefully worded so as to avoid any adverse tax consequence. It is not unusual for some taxpayers to overlook some expenses in the relevant year and make "previous year's adjustments" in current books. Deductions for such amounts may be lost for ever. Decision to suspend some write offs as for stocks lost by creating a stock-reserve, as is being done in an archaic system of accounting adopted in co-operative sector, may lose the right to such loss forever.

1.11 Business deductions

The largest volume of case law relates to business deductions. With proper description and classification, some of the controversies could be avoided. Where the normal nomenclature of the expenditure is likely to attract disallowance, while the merits will not, care may be necessary to choose the proper head and description. Though capitalisation of revenue expenses with a view to present a rosier picture need not be bar to claim it as revenue for tax purposes, it should not be forgotten that such treatment by the assessee himself is bound to inhibit the claim on merits.

1.12 Precautions necessary

The law has many artificial disallowances, whether it be on travelling expenses, or payments to related persons or concerns considered excessive and unreasonable, etc. Section 43B requires payment by due dates with most adverse consequences for default in the case of welfare dues. Expenses above Rs.20,000 have to be by crossed-cheques or crossed-drafts. Acceptance of loan and deposits and return of loans, when it is Rs.20,000 or more, has to be by account-payee cheque or draft.

Some of these disallowances may disappear but new ones would surely take their place. Failure of TDS provision or delay in payment attracts heavy interest and penalties. Failure to deposit with the Government the tax deducted on due date may even invite prosecution. Non-payment of advance-tax and delay in filing return, when combined work out to levy of interest at 3 per cent. per month and this could be compound interest because the law presumes that whatever is paid, is to be first appropriated towards interest rather than the principal amount. The effective rate of interest may even be much higher because such interest payment is not deductible from taxable income.

1.13 Duty to inform, educate and caution

These are some of the matters on which the auditor has to brief himself, educate his clients and warn them about the serious consequence because mere education sometimes is not enough. The client requires a jolt from the complacency to which he is misled by his prosperity. He is bound to blame the auditor for not having sufficiently warned him of the alarming consequences of ignoring such warnings.

1.14 The Ten Commandments

The following Ten Commandments for a lawyer by E.J. Couture, in La Abogacia translated and reproduced in American Bar Association Journal (Sept. 1958) should be equally applicable to an auditor. It reads as under:

1. Study.--Law is continually being transformed. If you do not follow its changes, you will be less of a lawyer every day.
2. Think. --Law is learned by study, but it is exercised by thought.
3. Work.--Law is arduous toil put in the service of justice.
4. Fight.--Your duty is to fight for the law; but in the day when you find the law in conflict with justice, fight for justice.
5. Be Loyal.--Be loyal to your client, whom you must never forsake until he proves to be unworthy of you. Be loyal to your adversary, even when he is disloyal to you. Be loyal to the judge who, not knowing all the facts, must rely on your word, and, as far as the law is concerned, at one time or another, he must have confidence that you trust him.
6. Be Tolerant.--Tolerate the truth of others as much as you would have others tolerate your own.
7. Be Patient.--Time will vindicate those things which are done with its collaboration.
8. Have Faith.--Have faith in the law as the best instrument for the co-existence of men; in justice as the normal destiny of the law; in peace as the generous entity of justice; and above all, have faith in freedom without which there is no law, no justice and no peace.
9. Forget.--Advocacy is a struggle of passions. If in each combat you would burden your soul with rancor, there will come the day when life will be impossible for you. The combat over, quickly forget your victory or your defeat.
10. Love Your Profession.--Seek to consider advocacy in such a way that the day when your son asks for advice as to his destiny, you will consider it an honour to propose that he become a lawyer.

CHAPTER 2 Preparation of Return

2.1 A return is a basic document

An income-tax return is a record of facts as conveyed to the tax collector. It is not so much the law as the income-tax law is often understood or rather misunderstood. Viscount Radcliffe had said: "Facts and law often inter-penetrate each other more thoroughly than theory allows for. Indeed the presentation and arrangement of facts contribute half the art of exposition".

The foundation for all assessment proceedings is a return whether filed or not filed. What has not been amended at the time of filing return cannot be lightly mended. A return filed without due care can create problems which may be difficult to set right. There is an old Jewish proverb: "It's better to measure ten times and cut once, than measure once and cut ten times". It is, therefore, better a return is prepared after measuring facts ten times before filing return than measuring facts ten times after return.

Preparation of return is not only a preliminary step but the most fundamental one. The care taken in preparation of the return may well avoid future problems. Lack of due care and attention may land even an innocent taxpayer in difficulties later. Disclosure of required particulars saves the taxpayer not only from penalty but also protects him from back assessments for which he is otherwise vulnerable in future years by way of recomputation or reassessment. Consider the scope of presumptive tax and avail the same wherever feasible. "In all things, success depends on previous preparation and without such preparation, there is sure to be failure" said Confucious. Lack of preparation for a return may mean worse than the failure in having it accepted.

2.2 Collection of information should precede return

Collect all the information that is available with the taxpayer with due care for ascertaining complete explanation for entries in books, credits and debits in bank accounts, cash credits, investments, etc. Collection of information on lines of what is required for the audit report under section 44AB will serve as a check sheet for fault-free return.

Mathew Arnold had said: "Lack of recent information is responsible for more mistakes of judgments than erroneous reasoning".

2.3 Check with past returns

Reconcile the closing balances of previous years with the opening balances for the current year, if books are maintained. Check the closing balances in last year's statements with the opening balances in the statements annexed to the current return. It is because, this is what the Assessing Officer or Departmental or Revenue Audit does.

Ensure all the income from investments already disclosed in the preceding returns are accounted or their disposal indicated with or without liability to capital gains tax. If this is not done, the need for taking up cases for scrutiny may arise. Similarly, investments made during the year may also be specially noted with details of sources, where accounts are not maintained, so that it avoids the difficulty of tracing out the source in a later year and, often avoids the necessity of explanation in future years.

If there be any past problems pending in appeal or likely to recur, steps to avoid repetition of such problems should deserve special attention. Implications of section 64 requiring aggregation of others' income should not be lost sight of.

2.4 Check computation of income from each source

Brief yourself about the correct choice of head of income and the method of computation of income under each head. See that the expenses incurred by the assessee are properly claimed. Source-wise computation of income or the Schedular method of arriving at income with reference to each head of income is very much part of our law. Dr. Chelliah Committee would consider such a system to be in need of reform. But as the matters stand, the same receipt may give rise to different taxable income, if computed under one head rather than the other. In matters of lease, it is likely that the income may be assessable either under "Property", "Business" or "Other Sources". Profit on sale of shares might be taxable either under the head "Capital gains" or "Business" depending upon the intention of the assessee. Even a single venture may constitute adventure in the nature of trade taxable as business or it may be liable as capital gains. Loss from property can also now be carried forward. Income from other sources or business income as in a case, where the property is let out along with considerable amenities, can be carried forward and set off. But then, if such property is treated as depreciable asset, if sold, it will be liable to tax as short-term capital gains. It may be too late to mend any choice once made in respect of these matters. Hence, a choice of head of income in the first year of return of such receipt may have far-reaching tax implications.

It also becomes necessary to have proper documentation for the choice that is made. Any classification of income under different heads or, in other words, breaking up the income is a vital matter in view of the tax effect which different alternatives may offer, wherever there are alternatives. In CIT v. National Storage Pvt. Ltd. [1967] 66 ITR 596 (SC), the Supreme Court was dealing with a case where the issue was whether the rent from vaults for storage of films could be taxed under the head "Business" or income from property. There was difference between the Members of the Tribunal with the Third Member deciding in taxpayer's favour conceding that it should be assessed under the head "Business". A number of English and Indian decisions were discussed, but the Supreme Court held that the decision will "depend upon facts of each case", while upholding the finding of the majority view of the Tribunal. The general consensus of all the courts in respect of such dispute is the understanding, which the assessee himself has and the return which he has made, wherever there could possibly be doubt as to the head of income under which the income could be assessed.

2.5 Beware of omissions

Though the spectre of additional tax under section 143(1A) of the Income-tax Act, 1961, has vanished with deletion of the sub-section from June 1, 1999, any prima facie omission in respect of any addition or disallowance may invite action for scrutiny under section 143(2) or recomputation under section 147. There is a definite possibility of penalty consequent on any addition in a regular assessment, because Explanation to section 271(1)(c) deems concealment, wherever there is difference between assessed and reported income.

2.6 Check whether the income is offered in right hands

The income is often required to be taxed in a different hand. There may sometimes be doubt, whether the income belongs to the individual or the Hindu joint family as in cases where the income is earned by collective efforts of the members or by the use of nucleus funds, which may be treated either as loan from the joint family or as deployment of such funds for the business of the joint family. It is also possible that income from joint venture may be assessable either in the hands of association of persons or in the hands of each member. The income in effect may be assessable in the hands of the person other than the owner thereof. In minor's case, income could be assessed in either parent's hands. Income of the wife or daughter-in-law may required to be clubbed in the hands of the husband or father-in-law. In all such cases care should be taken to see, whether the assessee is not inviting any liability other than what is strictly warranted by law.

2.7 Check set offs

See that inter-head adjustments and carry forward losses are properly made in accordance with law. The law as to set off has become very complex in recent years. The claim for set off whether in the same year or past years has to be clearly stated. Set off of loss for the past year has to be separately claimed after computing capital gains or property losses and not directly sources-wise as sometimes mistakenly done.

2.8 Read the columns and instructions in the return and follow them

Where there are instructions in the return, they have to be read carefully before filling up the return. Non-enclosure of invoices for purchase of assets for claiming investment allowance (now deleted) as required in the instructions had landed some taxpayers in avoidable disallowance of the claim and further difficulties in getting it set right. Even wrong filling up of the column in the return by including total losses to be carried forward or depreciation including past losses had landed a few taxpayers for liability, overlooking the provision of law that past losses or depreciation get absorbed only to the extent of available profits reducing the income to `nil'.

2.9 Check deductions and reliefs

Ensure that where deductions under Chapter VI-A and rebate under section 88 are claimed, the conditions therefor are satisfied and evidence wherever necessary is obtained and enclosed. Deductions and reliefs which are not claimed may well be lost to the assessee. The courts have often held that it cannot be claimed during appeal proceedings, unless such relief could be granted on the basis of available facts on record. The records may not always contain all the relevant facts. It sometimes happens that the assessee does not claim a relief, say, for new industrial undertakings or for export relief in a particular year, where the return shows a loss but the Assessing Officer makes certain additions for lack of proof of purchase or such other reason. It may ultimately turn out that the additions are sustainable. Where the claim under Chapter VI-A in such case is not part of record, the assessee may well lose the claim. A note on eligibility for such deduction but for the loss has the effect of entitling the taxpayer to the claim to which the assessee is entitled under the law but for the loss. This would enable an alternate claim minimising the risk of losing the claim on grounds of jurisdiction.

2.10 Prepare a comprehensive statement of income for income-tax purposes

Prepare a statement of income adjusted for tax purposes most carefully. Notes on accounts, qualifications in audit reports, reservations and adverse comments in Tax Audit Reports, etc. would require explanations by way of notes, where necessary. Notes help you to avoid the case being chosen for scrutiny when some acceptable reason is given by way of explanation, citation or reference to legal opinion for any adjustment made or not made. Case Studies given at the end of this book may be seen for illustrations.

The advantages of such comprehensive notes are:

(i) Such notes may often satisfy the Assessing Officer about correctness of the claim and avoid choice of the case for scrutiny, which might have otherwise been considered necessary.

(ii) The need for notes giving all the relevant facts for any amount claimed to be exempt is felt all the more under section 147(a) as amended from assessment year 1989-90, because section 149, which gives a longer time limit, still used the words "income which has escaped assessment' and such escapement will not be easily inferable, where the assessment is made after scrutiny under section 143(3) without adding the relevant income, which is the subject matter of a note with complete facts without any misrepresentation. Explanation 2 to section 147 deems escaped assessment in cases, where (i) no return has been furnished, (ii) where return has been furnished but no assessment has been made with such return not disclosing the income now sought to be included, and (iii) where an assessment has been made but the income has been under-assessed or at a lower rate or subject to excessive relief, loss or depreciation. Since Explanation 1 stipulates the need for disclosure, escapement is not one which can be lightly presumed, where there is a reasoned note disclosing all primary facts in all borderline cases.

(iii) Such disclosure is absolute protection both for penalty and prosecution, unless the claim for non-inclusion is totally frivolous and not based either on facts or any possible legal opinion.
(iv) The immediate advantage is that an amount for which there is an explanation or an argument for a claim or an addition not made is that it will not be necessary to choose the case for scrutiny.
A note explaining the case for a deduction or exemption attracts the attention of the Assessing Officer with the result that there is a temptation to dispense with the same hoping that the return would not be taken for scrutiny. The American Bar Association in its Ethical Standards for its members practising tax warns that likelihood of audit or detection is not determinative of the requirement of disclosure. The determination has to be on the basis that the issue is in dispute for adjudication in court and not on the basis that the issue may not surface because of possible success in "audit lottery", i.e., not chosen for audit by IRS. This is a sound advice not only as a matter of ethics, but also on practical grounds.
2.11 Use Part III/IV of the return wherever possible
Part III/IV of the return gives a very valuable right to the assessee to avoid penalty and possibly prima facie adjustments.
Part III in Form No.3 is titled "Income claimed to be exempt" and requires information as to the
1. Nature of the claim,
2. Amounts, and
3. Reasons for the claim.
It gives an opportunity to the taxpayer to give explanation as to why particular receipt is not treated as income. All items which are likely to warrant a different interpretation can be included therein as a matter of abundant caution. There is a temptation to avoid use of the column for the possible reason that the assessment may be taken up for scrutiny for more information on these items and that it may eventually become subject to addition merely because it is disclosed in the column. Though the very fact of inclusion should ordinarily protect a taxpayer from consequences of non-disclosure, reasons have to be given, because, merely filling up this column may not offer total immunity, if there is no justification for the entry therein. Disclosure of a cash credit in this part did not avoid penalty in a case where the credit was found to be not genuine, because it was found that the part is intended only for incomes which are covered by bona fide interpretation. However, by highlighting the issue in this part, scrutiny of the case is almost a certainty. But scrutiny in such cases should be welcome as it would forestall any reopening of the assessment on this point at a later date. The facts may be given in brief by way of separate annexures, if necessary, so that there may not be any scope for misunderstanding or possible allegation that there is a deliberate misrepre-sentation of either law or facts. It is because immunity from penalty may be lost, if facts are otherwise.
It is sometimes felt that this part is confined only to receipts and not to expenses. Since an expense is a charge on income, its deductibility or otherwise has an impact on income. The use of this column cannot be ruled out in such cases. At any rate, a separate note in the income computation statement would have the same effect as inclusion in this part.
2.12 Maintain client's tax file properly
Let the file contain paper work for preparation of return, with a copy of the return and statements, for all the primary materials and briefs so that one does not have to search for information which may be required during the assessment.

It incidentally helps to avoid inference of abetment, where a client is guilty of evasion, with auditor not being privy to it.

Abetment is a serious charge and it is not unusual in prosecution cases to include all those, who are responsible for filing a return including employees or even auditors, apart from the instances, where auditors have been directly charged for falsification of records, though more often unsuccessfully under the Indian Penal Code. A professional advisor does not automatically liable for abetment under section 278 of the Income-tax Act merely because of a charge against his client as was point out in Navrathna and Co. v. State [1987] 168 ITR 788 (Mad). But, where abetment can be established, it is no defence for abettor that the person who has evaded the tax has not been proceeded against as was held in Umayal Ramanathan v. ITO [1992] 194 ITR 462 (Mad). In ITO v. S. Ponnambalam [1999] 240 ITR 171 (Mad) abetment charges against auditor were not successful but indicates the need for caution in the part of advisors to steer clear of any involvements in matters of their clients beyond what is strictly warranted by their legitimate role as auditors and advisors.

Even a charge of criminal conspiracy was made on persons connected with offences in K.T.M.S. Mohammed v. Union of India [1992] 197 ITR 196 (SC), though prosecution was unsuccessful in this case, as it was found that the act committed by one accused could not be lightly attributed to another.

In Navrathna and Co. v. State [1987] 168 ITR 788 (Mad), a chartered accountant was prosecuted for abetment on the basis of documents found during the search of his client. The High Court, no doubt, found that the only justification for the prosecution, as was evident from the charge sheet, was that the Chartered Accountant was the authorised person, who prepared the accounts and that such accounts were typed in the letter-head of the firm of which the Chartered Accountant was the proprietor. The High Court noted that unless evidence indicated that the document found by the Department were available to the auditor, he cannot be made liable. The petitioner's claim that he was not aware of the document had to be accepted, unless there was something to controvert such a claim. It was held "continuing of the proceedings against the petitioner, therefore, would be an abuse of the process of law". The High Court relied upon the earlier decision in CIT v. Dandeker [1952] 22 ITR 235 (Mad), wherein it was held that the auditor did not owe a duty to the department. However, in view of section 44AB and the power of Commissioner to disqualify the authority of the Chartered Accountant to practise as authorised representative and also the self-regulatory disciplinary procedure of the Institute itself, it cannot now be stated that the argument, that a Chartered Accountant merely acts as a post office of his client in transmitting documents, when he filed them, could be treated as any longer holding the field, especially where the chartered accountant also certifies the statements as made out from the accounts, acting under section 44AB of the Income-tax Act, by way of audit report. In this connection, vulnerability of a fault tax audit report for possible action under section 288 of the Act as explained in Press Releases dated 10th December, 1999 (see [2000] 241 ITR (St.) 4).

It has to be pointed out that section 278 is being invoked in quite a few cases against auditor along with the taxpayer though in most cases this is done without any justification as a matter of routine and such prosecutions are bound to fail. Even so, the need for taking proper care in maintaining working papers to avoid any charge of abetment cannot be over-stressed.

In the case of Umayal Ramanathan v. CIT [1993] 194 ITR 462 (Mad), the Madras High Court held that the charge of abetment can continue even where charges for evasion of tax or making false statement may have been shown to be wrong. In Lalji and Co. v. Delhi Administration [1985] 154 ITR 728 (Delhi) the department rightly charged even a person, who admitted having introduced creditors, whose credits were found to be not genuine.

Though such charge failed, the precaution to be taken, while dealing with cases of persons who evade tax in the context of prosecutions at the slightest provocation, is only too apparent.

2.13 Fill in the return and file it with enclosures carefully

(i) See that all the enclosures that are required both statutorily and those to help the taxpayer are enclosed after listing and numbering them and properly mentioning the total number in the space provided for it in the return form itself. Where the enclosures are numerous, have an index prepared with enclosure page-numbered and the entire matter properly clipped or bound. Special care has to be taken in filing return for a firm as the partnership deed duly certified by all the partners has to be enclosed for firm's returns for assessment year 1993-94 and whenever a change in constitution occurs in any later year. Check and keep acknowledgment safely. Ensure that the acknowledgment is not merely for return but also for each enclosure by giving adequate description of the enclosure.

(ii) Check calculation of self-assessment tax and interest and ensure enclosure of challans and TDS certificates.

(iii) Have the return properly signed by the person required under section 140 of the Income-tax Act. A return signed by a person not authorised to sign will turn out to be invalid and would bring on the assessee all the consequences that would be fall a person, who has not filed return.

2.14 Preparation necessary even for a non-taxable year

Even where there is no taxable income, it may be advisable to file return for the sake of continuity, since there may be a taxable income or loss in the previous year and possibility of a positive income or a loss next year, except where it may be advisable not to file a return in contingencies, where a taxpayer may not like to claim depreciation or such other advantage. Even in such a case, preparation of a return without filing the same would be preferable, so as to be able to meet any enquiry at short notice. In other words, the exercise of compiling information for determination of income becomes necessary for each year. A return discloing a non-taxable income in a valid return since that part of section 139(10) which had rendered such return invalid has been deleted with effect from 1st April, 1991.

2.15 Filing a return - Better late than never

Filing a return in line is necessary not only for warding of interest or penalties, but to assume oneself of right to file revised return. Revised return cannot be filed, where the original return is belated as held in Kumar Jagdish Chandra Sinha v. CIT [1986] 220 ITR 67 (SC). Loss reutrn not filed time would lose the benefit of carry forward and set off of loss.

Even a belated return which may attract interest is better than no return, when there is taxable income. It is because, otherwise

(i) interest burden will have snow-balling effect.

(ii) a longer time limit will be available to tax collector for invoking assessment jurisdiction under section 148, since the entire income will be treated as escaped for purpose of limits for reopening assessment or recomputing income.

(iii) A search can be more easily authorised.

(iv) Explanation 3 to section 271(1) deems concealment and invites penalty for persons not previously assessed.

(v) Prosecution is also possible under section 276CC where the tax payable exceeds Rs.3,000.

(vi) Penalty of Rs.1,000 is leviable under section 271F(1) of the Act.

2.16 General

All the above steps including preliminary step for operation of accounts and auditing have to be done within a rigid time schedule. Organising internal audit or contemporary checks for clients will solve many problems of the taxpayers especially in the following areas:

(i) Ensure that tax audit is completed within the time limit prescribed by law wherever necessary.
(ii) Ensure that payments are by crossed cheques so that section 40A(3) is not attracted, or have the necessary documentation even at the time of payment to claim exemption under rule 6DD of the Income-tax Rules.
(iii) Ensure that transactions above Rs. 20,000 are by account payee cheque to avoid violation of sections 269SS and 269T. Have documents prepared for proof of "reasonable cause" where violation has already occurred.
(iv) Ensure tax deduction at source, wherever necessary.
(v) Watch out to ensure prompt payment of advance-tax.
(vi) Compile information from time to time in respect of matters covered by the audit report under section 44AB like disallowance on travelling, entertainment, etc.
(vii) In rare cases, it may be preferable to file a declaration on a point of law pending in same assessee's case for an earlier year under section 158A and avoid a repetitive appeal.
(viii) In the case of corporate assessees, the need for considering liability for Minimum Alternate Tax is an additional responsibility.

CHAPTER 3 On receipt of intimation

3.1 Check for action on return

Keep watch for response to return, where refund is due. Issue reminder, if overdue.

On receipt of refund or demand, check whether the demand or refund is correct. Interest calculation with reference to period and rate of interest needs to be checked. Errors in calculation of interest often arise, where refund is granted only up to the date of intimation or assessment, while such refund is due under the law under section 243 till the date of refund voucher as conceded in the Circular No. 20D, dated August 20, 1968. "Date of order granting the refund" has been reasonably interpreted in this circular to mean that it is the date of refund order. Mistakes are also likely to arise where there has been variations in rate of interest during the period for which interest has to be reckoned. Notwithstanding some conflicting interpretations, the Assessing Officers are bound to reckon interest for different periods with reference to differing ruling rates as held by the Supreme Court in ITO v. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. [1975] 101 ITR 457. Since entitlement to interest is often either overlooked by the officers or erroneously reckoned, it needs a special watch.

3.2 File rectification petition wherever warranted

Where an order under section 143(1) is received, if such order contains a mistake in calculation of tax, or interest has not been given or where it is incorrectly calculated, prefer a petition under section 154 immediately.

3.3 File appeal where necessary

Where interest is erroneously levied or interest, where eligible, is not granted, file an appeal, where the amount is large. If an order under section 154 declining rectification either partly or wholly is received, a revision petition is advisable against the order under section 154, so that the same issue becomes subject-matter of a double remedy.

While filing an application under section 154, do not fail to ask for a personal hearing. Convincing the Assessing Officer avoids a further appeal or revision petition, which may be expensive and time-consuming.

3.4 Jurisdiction should be questioned

Take care to question the jurisdiction as in case of an intimation under section 143(1)(a) (now deleted) and not merely the merits, which are only secondary. This has to be done both in the petition under section 154 and appeal. It is sometimes easier to succeed on the question of jurisdiction than on the merits, though the normal rule is to be strong on facts, so that jurisdiction becomes an academic issue.

3.5 File revised return wherever necessary

Filing a revised return is a right of the taxpayer. It is an opportunity to set right any omission or failure. But even for revision, time is limited as no revision is possible either after completion of regular assessment or after the end of the year succeeding the assessment year, whichever is earlier. A revised return does not lie, where original return is filed belatedly, but a second revised return for the same year is possible, where original return has been filed in time as held in Niranjan Lal Ram Chandra v. CIT [1982] 134 ITR 352 (All). A return filed in response to notice under section 148 cannot be revised as held in CIT v. Banshidhar Jalan and Sons [1994] 207 ITR 488 (Cal). Even so, there may be many occasions, when revised return may be possible and become necessary, because some omission has been noticed in the return or because of the development of law. Audit or accounts in the succeeding years may show certain expenses relating to earlier year which were omitted to be booked because they were paid only during succeeding year. It is certainly possible to file a revised return in such cases as long as no formal assessment under section 143(3) or 144 has been meanwhile made. Even where such a revised return is barred in law, it will indicate the bona fides of the taxpayer in view of the fact that omission has been voluntarily set right, so that penalty can be avoided. It is not uncommon for the Assessing Officer to issue a notice of rectification under section 154 for omissions either on audit objection or on second look at the records. It often happens that the Assessing Officer may be right in the proposed disallowance but there could be some doubt as to jurisdiction. While questioning the jurisdiction, it may be prudent policy to concede the same as even a revised return conceding the proposed addition may invite penalty for omission to disallow the same in the original return, wherever it is felt that it is better to purchase peace rather than question the addition. In CIT v. Ranchhoddas Karsondas [1959] 36 ITR 569 (SC), it was held that even a return showing income below taxable limit is valid in law. Failure or omission to file the return voluntarily within time is no bar to a belated return, since section 139(4) permits such leniency before the assessment is actually made.

Section 139(10) brought in the statute with effect from April 1, 1986, has been omitted with effect from April 1, 1991. Prior law, therefore, stands restored with the result, that, even non-taxable return is valid in law.

In Balchhand v. ITO [1969] 72 ITR 197 (SC), voluntary return, it was held, is not possible once an assessment is made, even if such return is filed with reference to a notice issued prior to the assessment as was held in Dhaniram Dharampal v. CIT [1936] 4 ITR 113 (Lahore), Bhaskaran v. Addl. ITO [1963] 47 ITR 334 (Ker) and Balish Singh and Co. v. CIT [1987] 165 ITR 575 (Cal). Where the assessee filed an incomplete return without enclosures like profit and loss account and balance sheet, subsequent return along with them would be valid and it is open to the Assessing Officer to act upon the second return as valid return as was pointed out in Esthuri Aswathaiah v. ITO [1961] 41 ITR 539 (SC). The taxpayer is entitled to file revised return under section 139(5), when he "discovers any omission or any wrong statement therein". The word "discovers" has been interpreted to mean that the assessee cannot furnish a revised return, if the Assessing Officer has already found concealment and the assessee files a return thereafter. But such a view need not deter the taxpayer from hastening to file a revised return as it is bound to be of help in penalty proceedings.

There is a view that there should be "omission or wrong statement" and not "concealment" or "false statement". Such view has been taken in Addl. CIT v. Radhey Shyam [1980] 123 ITR 125 (All). There is also a view that mere change in circumstances or accounting system will not warrant revised return--Deepnarain Nagu and Co. v. CIT [1986] 157 ITR 37 (MP). The correct view appears to be that section 139(5) is not concerned with concealment or otherwise in the original return. The question whether the omission is conscious or inadvertent may not be relevant. Any variation should justify the revised return.

In CIT v. Sri Baldeoji Maharaj Trust [1985] 142 ITR 584 (All), it was pointed out that even the revised return to enclose the auditor's report previously missed would be valid, since all that the law requires is an omission in the first instance and discovery subsequent thereto.

In the new assessment procedure, it is evident from Chapter XIV-B containing section 158B, since omitted before it came into effect for purposes of levy of additional tax at 50 per cent., that the additional tax was leviable with reference to the last return filed prior to issue of notice under section 143(2). Additional tax under section 143(1A) (now deleted) substituted the proposed tax under section 158B indicating that the revised return can be filed to correct any mistake without attracting any liability on account of earlier return. Under the new scheme of acceptance of return, it would not be proper to imagine that the taxpayer is prevented from correcting a mistake, when there is no chance of such mistake being otherwise discovered in the absence of an assessment, unless it is chosen for scrutiny.

Though a revised return need not always show a different income, it is better, if a minor variation in income is indicated in the revised return, so as to come within the rationale of existing precepts as in Nanjappa Textiles v. CIT [1985] 153 ITR 109 (Mad).

CHAPTER 4 On receipt of notice under section 143(2)

4.1 Be Prepared for the hearing

It is poor strategy to assume and hope that the case will not be chosen for scrutiny, which should ordinarily be welcome, since the jurisdiction with reference to limits of escaped income for re-opening a completed assessment is more restricted in respect of an assessment completed after scrutiny. Further, heavy interest and possible liability for penalty in an assessment where the income is recomputed under section 148 is a much worse prospect than the immediate drudgery of facing the Assessing Officer.

Be prepared at the first hearing itself on all matters covered in audit report, notes, items in Part-III or Part-IV of the return claiming exemption and what may reasonably be expected to be inquired into.

Preparation, well ahead of the hearing with necessary documentation in expectation that the case will be chosen for the assessment, may well enable the assessment to be completed during the first hearing itself. This chance of having the assessment completed, by providing answers for all queries there and then, should not be missed. A meandering assessment may give rise to more problems than is possible in an expeditious one.

Documentary evidence has now become more important than hard facts. There is hardly any statement which is accepted without supporting documents. Even adjournment letters on grounds of health are expected to be supported by a doctor's certificate. There is unfortunately no alternative for the tax representatives except to conform to this practice and ensure even prior to scrutiny that there are supporting documents for all deductions.

4.2 Always bring compliance on record

Where notice under section 142(1) is received, check all the documents which are specifically required and produce them along with a letter to the Assessing Officer stating that these are being produced and ensure that it is taken on record. Take care to record your presence in the visitor's book. It is not uncommon for the Assessing Officers to overlook the presence or production of records. Absence of evidence in this regard will handicap prosecution of appeal.

It may even be necessary to send a letter bringing on record the fact that you have complied with the requirement or the fact that the Assessing Officer was not present when you had presented yourself at the appointed time, in case the circumstances warrant such safeguards.

4.3 Evidence in support of return

When a case is chosen for scrutiny, the Assessing Officer issues a notice under section 143(2) "either to attend his office or to produce or, cause to be produced there, any evidence on which the assessee may rely in support of the return". Materials which would support the return are those considered relevant by the assessee himself. However, if the Assessing Officer is not satisfied with such evidence, he may call for further evidence or ask the assessee to show cause, why the return or any part of the return is found unacceptable to him. The list of books and documents produced used to be filed in a non-statutory form in the past. Such a procedure is not in vogue. However, if the assessee submits such a list, during the hearing, this will not only be in order, but may also help the taxpayer to avoid any inference of non-production of evidence.

It is not always possible for the taxpayer to anticipate the Assessing Officer's enquiries and be prepared for the same. The Gujarat High Court in Apex Electricals Pvt. Ltd. v. Union of India [1962] 61 ELT 413 (Guj), while dealing with a central excise case held that a taxpayer could not be expected to volunteer information and satisfy the expectation of the Assessing Officer unless asked for. It pointed out that no adverse inference could be drawn for not volunteering information in matters on which there were no specific queries, in following words: "They were neither required to disclose the same nor questioned about it before the statements were actually recorded by the excise authorities."

4.4 Treatment of self-incriminating evidence

There are occasions when production of evidence or account books may be self-incriminating or invite liability not admitted in the return. For example, where substantial purchases have been paid for in cash exceeding Rs.20,000, a taxpayer may find himself in a better position by inviting an estimated assessment for defective accounts. In such a case, the defect relating to non-maintenance of proper accounts inviting an assessment based upon best judgment would be a lesser evil. It is on such occasions that the taxpayer is best advised to file a revised return admitting further liability rather than face the consequences of filing materials more adverse to the taxpayer.

4.5 Unproved return may occasion prosecution

With the accent on the part of the Income-Tax Department on prosecution, care must be taken to see that the assessee does not land himself in liability for prosecution by trying to prove a return which is not capable of being proved. It is quite possible that the assessee's auditor may himself not be aware of the actual situation except on consideration of the materials required to be produced by the Assessing Officer. This is a stage where retrieval is possible either by way of a revised return or by inviting an assessment on adverse inference for non-availability of evidence rather than facing the consequences of producing unreliable evidence which may be treated as false, if not fabricated. It must be remembered that an assessee who expects to be accused of an offence has to be on his guard, because the constitutional right to silence is not available to a person till he is accused of an offence but not earlier. Incidentally the safeguards for avoiding possible prosecution also helps to ward of potential penalty. Hence, it is part of good tax management to ensure that the return is accepted as far as possible and where it is not capable of being accepted, at least, the possibility of penalty and prosecution is avoided.

4.6 Keep the hearing open till enquiry is completed

Where any information is required or where the Assessing Officer proposes to make an addition, make sure to ask for time to give a formal reply, so that the matter is not closed for lack of evidence. Principles of natural justice are treated as observed only where proper enquiry is made and not merely by hearing the assessee. If you do not keep the enquiry open, further evidence which may turn up may well be shut out.

Ensuring that any hearing is not closed by adding in the last paragraph, a prayer for an opportunity to clear any doubt or misgivings in accepting the explanation has a better chance of more persuasive final explanation before the Assessing Officer himself or appellate authority than otherwise.

4.7 Sign the order sheet after due care

Where the Assessing Officer requires the signature of the assessee or his representative on adjournment or to show cause, take care to note the contents of the order-sheet. If it does not merely acknowledge the adjournment date, check the veracity of the recorded minutes. Where the recorded minutes require qualification, qualify the same before signature. Any concession to be made by way of proferred income should be made after considering consequence of not only tax but also interest and penalty. Where there is offer of no-penalty, have it recorded as conditional for concession.

The appellate authorities are most reluctant to permit a taxpayer to retract from the concession made in writing by the taxpayer or his duly authorised representative.

The precaution not to sign on dotted lines has become more and more necessary in recent times because of the technical stand often taken by the departmental officers in appeal.

Simple signatures noting adjournment is often construed as an agreement to produce witnesses, whether it is possible or not, or even to agree to additions which were merely proposed in the order-sheet. Signature with a qualification made, no doubt, may irritate the Assessing Officer but attempt to avoid such irritation by putting an unqualified signature may well cause the assessee more serious damage.

4.8 Give written replies

Always prefer to file a written reply even where information is required orally. Always end a written reply by stating that you are willing and ready to furnish any further information that may be required on the subject. Oral replies are likely to be misunderstood or twisted or sometimes treated as never having been made at all. In case the Assessing Officer has asked to show cause, why an addition or disallowance should not be made, let the reply specifically state that you would like a further opportunity by way of personal hearing, if the Assessing Officer is not satisfied with the reply.

Principles of natural justice require an opportunity to be given not merely for an audience, but to meet the inference, if any, drawn by the Assessing Officer. It is for this reason that it is necessary to make it clear at the first stage, that there is no reason why assessee's facts or submissions or even the reply to the show cause notice should be taken as being not acceptable, unless such an inference is specifically put to the taxpayer after considering the facts, submissions or replies made by taxpayer or on his behalf.

While giving a written reply, care must be taken to state the facts consistently and clearly. Enclosures by way of copies of documents or extracts from accounts etc. may be annexed, wherever necessary. While such reply may not be replete with citations of case law or statutory provisions, they may be adverted to, wherever it is considered necessary. In other words, the reply should contain both facts and law, but more of facts than law. Further facts may be shut out, but law can be canvassed even later.

4.9 Adjournment letter should be a speaking one

Never ignore any notice under section 143(2) or 142(1). Let every adjournment letter be filed a few days in advance stating the reasons completely and not in a routine manner, since a carelessly or a routinely worded adjournment petition filed only on the date of hearing gives an opportunity for the Assessing Officer to reject the petition and pass an ex parte order, which is more difficult to get over. Even if no ex parte order is passed, an adverse inference may well be drawn, if such adjournment is found to have been asked for on grounds which cannot be reasonably accepted. Proof of sickness or any other proof in respect of grounds taken may not always be necessary, but should invariably accompany, wherever adjournment is requested for a second time.

An appellate authority may consider that a request which reaches him on the date of hearing should not be on routine grounds, since, in ordinary course, adjournment should have been applied for earlier, so as not to inconvenience him. A last minute adjournment should be for some urgent and unavoidable reason. When the reason given is merely routine like other pre-occupations of the assessee or the auditor, there is always a tendency to feel slighted.

It is for this reason that such application should be better worded or documented. An application for adjournment, which reaches the Assessing Officer under acknowledgement well before the hearing not only has a better chance of acceptance but gives a handle to the taxpayer to question the refusal, if such refusal is not communicated before the date of hearing. Ex parte order in such cases may be more easily got set aside.

4.10 Do not withhold evidence

"Facts do not cease to exist because they are ignored" said Aldous Huxley. Mark Twain in a satirical vein advised "Get your facts first and then you can distort them as much as you please". Do not withhold evidence on the wrong view that it is good tactics to surprise the Assessing Officer with favourable evidence in first appeal. Admission of such evidence in first appeal may prove to be an unnecessary ordeal. Even as a tactic, such a practice is most likely to boomerang on the taxpayer. Delayed evidence is usually suspect.

CHAPTER 5 Spectre of Reassessment and Recomputation

5.1 Escapement of income

From the assessment year 1989-90, it is not necessary for the Assessing Officer to make any assessment. Even "intimation" making prima facie adjustments to returned income is no longer permissible from June 1, 1999. Even where he has not chosen a case for scrutiny within the permitted time limit of one year from the end of month in which return is filed, he may decide that there is escapement of the income on the ground that chargeable income has escaped assessment or that there has been excessive claim of loss or depreciation or other allowances. Even where the case has been subjected to scrutiny and regular assessment, there is no exception except that the jurisdiction to reopen assessment for a period more than four earlier years is possible only where the escapement is to the extent of Rs. 50,000/Rs. 1,00,000 for periods up to 7/10 years as against Rs.25,000/Rs.50,000 for the same period in non-scrutiny cases. Unlike the earlier law which required either information received for reopening for four years, or furnishing of inaccurate particulars or concealment on the part of the taxpayer for reopening for a longer period, the arm of the law now extends to ten years with lesser restrictions for invoking such power of reassessment or recomputation. In spite of greater powers available to the Assessing Officer now under section 147, the proviso thereto does make reassessment or recomputation a little more difficult after four years, where there is no failure on the part of the assessee to file a return and where return is filed without any omission to disclose fully and truly all material facts. Hence a return with notes and use of Part III/IV, wherever necessary, should offer whatever protection is possible against recomputation or reassessment based merely on a change of the opinion or for fishing enquiry.

5.2 Material facts

Proviso to section 147 protects a taxpayer against reassessment, where there is full and true disclosure of all material facts. Where material facts are disclosed, but a proper inference is not drawn therefrom, reassessment may not be possible as was pointed out in Indo-Aden Salt Mfg. and Trading Co. P. Ltd. v. CIT [1986] 159 ITR 624 (SC), following an earlier precedent in this regard. But the same decision has pointed out that it is no protection to the taxpayer, where relevant facts have not been disclosed but were found by the Assessing Officer after further probe.

Explanation 1 to section 147 protects revenue in as much as mere production of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure. Material facts have been said to be primary facts as held in Star Automobiles v. ITO [1989] 178 ITR 613 (MP). A distinction has to be made between primary facts and collateral facts. The material facts are bound to be disclosed, while non-disclosure of collateral facts could not be serious as pointed out in Dinesh Kumar Gordhandas v. CIT [1983] 140 ITR 211 (MP).

5.3 Controversial issues

The income-tax law abounds with conundrums, where either inference as to liability is possible on the same facts, thanks to the uncertainty of law in general and the conflicting decisions of the courts in particular. A taxpayer is, therefore, better protected by disclosing the facts and the case law or the arguments in a note, though such disclosure would ordinarily invite an addition. But in the long run this may be a better protection in cases, where the Assessing Officer is inclined to accept the same. Even if he makes an addition as he is likely to do, the assessee may be able to establish his case in appeal and thereby bring a finality to the issue earlier than otherwise. Unless there is restrospective amendment to law or a decision of the Supreme Court with time-limit available for the Department to rectify the omission, a return with details already accepted or a matter concluded in appeal cannot be lightly disturbed. A mere change of opinion may not justify either recomputation or reassessment. There is no reason why the earlier precedents to this effect as in the case of Rai Singh Deb Singh Bist v. Union of India [1970] 77 ITR 802 (Delhi), and Indian and Eastern Newspaper Society v. CIT [1979] 119 ITR 996 (SC) should not be applicable to present law. It may also be pointed out that in the latter case, the Supreme Court found that the proposition in its earlier decision in the case of Kalyanji Mavji and Co. v. CIT [1976] 102 ITR 287 (SC) to the effect that even where income has escaped assessment due to "oversight, inadvertence or mistake" of the Income-tax Officer, reopening within the shorter time-limit is possible has been stated too widely and that the decision would not justify the inference that a reappraisal of the materials considered earlier is permitted. Some fresh information and not mere reappraisal of evidence already on record would be necessary to justify reassessment as held in Coca Cola Export Corporation v. ITO [1998] 231 ITR 200 (SC)

5.4 Response to notice under section 148

Where the notice under section 148 is issued, such notice may be capable of being questioned on the issue of jurisdiction. However, as jurisdiction is usually a matter of controversy, non-compliance in the hope that the notice is invalid is risky. A taxpayer may be advised to ask for copy of the reasons recorded, which is usually denied, since the departmental view supported by judicial precedents is that the taxpayer is not entitled to such reasons before he files a return. Whether there is any reply or the reply is to the effect that such reasons could not be disclosed, the assessee is best advised to file a return with a covering letter that such return is filed under the circumstances that the assessee is not made aware of the reasons, which prompted the issue of notice, while to the best of his information and knowledge, there has been no omission. This will not only show that the assessee has not submitted to the jurisdiction, but likely to protect him from any unconscious omission repeated in the fresh return filed in response to notice under section 148. Where recorded reasons are given, the validity of reassessment jurisdiction can be assessed with reference to the same and questioned where justified. Where merely gist of reasons are given and not copy of reasons recorded, the assessee has a legitimate ground for questioning the action of the assessing officer and his jurisdiction itself on this ground.

It is, however, not unlikely that the reasons may be known to the taxpayer. Where an under-assessment is due to miscalculation of depreciation or changes in law or precedents obtaining after the return or assessment, there is no risk in admitting the income as per law. However, there are many areas where under-assessment may be presumed as, for example, due to a discrepancy in accounts with parties with whom assessee has dealings. Any return which admits a higher income merely with a view to ward off any inconvenience by way of fresh enquiry or to oblige other traders so as to confirm their stand may land the assessee not only in tax as per the fresh return but even penalty or prosecution. Two verified returns with the latter one disclosing a higher income would certainly justify prima facie prosecution in almost all cases. Where the disclosure is prior to detection, the assessee may have the protection of section 273-A by way of waiver of penalty available once in a life time. Such waiver would also avoid prosecution. But the Assessing Officer may well say that he has detected evasion and that is why he has issued notice. If such a view is taken by the Commissioner as well, the assessee may land himself in trouble by trying to avoid confrontation in assessment. It is rather unfortunate that in our law any attempt on the part of a taxpayer to avoid dispute with Income-tax Department may put him in a worse position. This is a matter which has to be considered well before filing the return.

CHAPTER 6 On receipt of the order--Filing appeal

6.1 Beware of time limit

Remember the time limit which is very short, that is 30 days for appeal. Though the first appellate authority has the power to condone the delay, beware that each day's delay has to be explained. It is better not to put off filing of appeal till due date, since it gives lesser time for preparation with the result that neither the statement of facts nor grounds of appeal can be made prima facie convincing. A well-drafted appeal can make the best first impression. More the work done as to the facts and law on the subject before filing return greater is the chance of a better presentation and even greater chance of further improvement. This is best done with work relating to filing of appeal starting immediately on receipt of the assessment order. It has been truly said that procrastination is thief of time.

6.2 Ask for rectification where necessary besides appeal

There may be some mistakes apparent from the record. File a petition under section 154. But these items may also be included in appeal. Even if there are no other grounds for appeal, filing an appeal is a protection which ensures an earlier remedy in most cases. It often expedites correction. Where two remedies, which are not mutually exclusive, are available, it is wiser to exercise the right to both. It may expedite matters.

Even a mistake in law is capable of being rectified. Such a mistake may be inferable on the basis of a High Court decision, if there are no conflicting decisions. The Supreme Court in Hind Wire Industries Ltd. v. CIT [1995] 212 ITR 639 has held that the time limit of four years from the end of the year in which the order is passed will be reckoned from the last order, in which the mistake persists. It means that the time limit gets extended with every order of rectification or appellate order.

It is quite likely that a representative considers a petition under section 154 to be an adequate remedy, where he is convinced about his own case or expects reasonableness on the part of the Assessing Officer based on his past experience. He is likely to be shocked when the Assessing Officer treats the matter in a different light. Though appeal can be filed either against the order under section 154 or against the assessment order itself by way of delayed appeal along with condonation petition, resort to both the remedies will place no additional burden. In an appeal under section 154, the fact that it is a mistake and that it is apparent from record will have to be established. As for the delayed appeal, condonation petition will have to be allowed before appeal is admitted. There is a tendency on the part of the appellate authorities to think that the condonation is a favour and that, therefore, the very act of condonation may inhibit him from allowing the appeal on merits in a borderline case, even where condonation is conceded.

Even where the assessee is hopeful of his petition being allowed under section 154, he should ordinarily file an appeal within 30 days of the receipt of the order and file another appeal or revision petition before the Commissioner immediately on rejection of petition under section 154. This resort to double remedy may be made except where the mistake is patent as in case of arithmetical errors.

Where only petition under section 154 had been filed and this is rejected, apart from filing an appeal against an order under section 154, an appeal may be filed against the original order along with condonation petition. The courts have taken the view that where an assessee has wrongly pursued an alternative remedy having been misguided as to the correct remedy, delay could be condoned. This principle of general law was accepted, for example, in the case of CIT v. K. S. P. Shanmugavel Nadar [1985] 153 ITR 596 (Mad).

6.3 Appeal should be in time and in order

Appeal should be in time within 30 days of receipt of the order and should be filed in proper form (Form No. 35) and should be accompanied by appeal fee of Rs. 250/500/2,000 depending on whether the income assessed is below Rs. 1 lakh/1 to 2 lakhs/above Rs. 2 lakhs respectively.

Where an appeal is time-barred, the appellant is best advised to file a delayed appeal and seek condonation for delay rather than depend upon a rectification or revision petition. These are not effective substitutes, because the assessee's rights are more open and uninhibited by procedural limitations, once the delay is condoned. Denial of receipt of the order or any allegation that it was served on a person other than one authorised to receive the same, where it has been received by a member of the family or employee is likely to create more litigation, while in the process, the assessee may lose sympathy of the appellate Forum, which has got discretion to condone delay. But wrong service may be pointed out, while urging that the person, who received it had failed to hand over the same in time for appeal. His affidavit may be enclosed.

It must be noticed that each day's delay needs to be explained. But it is not the duration of the delay, but the adequacy of explanation that is material. It is true that short delays are usually condoned, while long delays would require a detailed petition as the appellate authorities are more reluctant to condone a longer delay. Since condonation in most cases involves exercise of discretion, any attitude that condonation is a matter of right will make the task of getting the delay condoned more arduous.

6.4 Wrong facts should be contradicted

If there are any factual errors in the assessment order, these may be specifically brought to the notice of the Assessing Officer, lest such wrong facts become the basis for a wrong inference merely because the assessee did not protest within reasonable time and had, in fact, acquiesced to the same. Such protest should be specifically made in the Statement of Facts and in the Grounds of Appeal by taking an independent ground. In the case of CIT v. T. I. and M. Sales Ltd. [1987] 166 ITR 93 (SC), the Income Tax Department had not thought of questioning the contents of an affidavit filed before the Tribunal. Since the decision of the High Court, which reversed the finding of the Tribunal in favour of revenue, was based upon the contents of the affidavit, it was urged on behalf of the revenue that this should not have been accepted without offer of an opportunity to the Income-tax Officer to cross-examine the deponent. The Supreme Court pointed out that the affidavit was filed along with the memorandum of appeal to the Tribunal and that the revenue had notice of it. The Tribunal had brushed aside the affidavit in the view that the decision rested upon the inference as to whether there was business connection and that the facts stated, if at all, related to the quantification of income deemed to arise to the non-resident but not on the claim that there was no business connection at all. In other words, it felt that, independently of the statement made in the affidavit, revenue was entitled to succeed. But the High Court came to the conclusion that the contents of the affidavit clearly indicated no liability, and that in view of the fact that the revenue had not made any attempt to controvert the facts stated therein, it was not entitled to succeed. It was in this context that revenue raised the question whether the High Court could have acted on the facts stated in the affidavit, when it had no opportunity to cross-examine the deponent. The Supreme Court observed that the High Court might have well remitted the matter back to the Tribunal for going into the affidavit, but then rule 10 of the Income-tax Appellate Rules provides that where a particular fact is not borne out from the record, when the assessee has filed such an affidavit and its admission had not been rejected but only found to be not relevant, the High Court could not be treated as having exceeded its jurisdiction in relying upon it. Considering the fact that the assessment was about 25 years old and revenue by its conduct, in effect, had waived its right to dispute the facts asserted in the affidavit by not challenging the admissibility on one hand and disputing the contents on the other, the High Court decision had to be upheld. In other words, an affidavit, which had gone uncontested, made all the difference to the outcome of the case. This case illustrates the old adage that silence, where speech is required, may tantamount to confession.

6.5 Undisputed tax must have been paid before appeal

If any part of undisputed tax remains unpaid, an appeal is no longer admissible since the discretion to admit the same in such circumstances has been taken away from the first appellate authority. Where adjustment of past refund has been claimed and the tax not paid, non-adjustment may well come in the way of admission, if too technical a view is taken by the appellate authorities. Better pay such tax, even in such circumstances, lest the remedy itself is jeopardized.

Section 249(4) with effect from April 1, 1989, clearly provides that no appeal "shall be admitted unless at the time of filing of the appeal.... the assessee had paid the tax due on the income returned by him". Even in case of appeal against ex parte order, where no return was filed, the assessee is probably in a better position, because the amount which he has to pay for the right to file an appeal, is only payment of advance tax being apparently the amount of advance tax on his admitted income or where a demand has been raised for advance tax, such demand. But non-payment of such amount is a condition that may be relaxed. Surprisingly, a person who has filed a return with part of the self-assessment tax outstanding is put in a worse position. There have been instances, where the first appellate authority had overlooked the omission and admitted the appeal and given relief, but the department had successfully filed an appeal to the Tribunal questioning such relief as lacking in jurisdiction. Where jurisdiction or validity of assessment itself is questioned, it is possible to take a stand that the entire tax is disputed, so that any shortfall in admitted tax may not amount to a disqualification for an appeal.

6.6 File affidavit where necessary

Where an inference has been made on wrong facts, or overlooking vital evidence, which was produced before the Assessing Officer, or a statement or a concession which has not been made is attributed to the assessee or his representative, or there is any other factual statement requiring correction, the correct facts are better stated in the form of an affidavit, since those who are technically minded believe in the procedure in civil cases, where any statement of fact must be asserted or contradicted by an affidavit. Where such affidavit accompanies appeal form, it may greatly help the taxpayer to ensure that there is no misdirection in conclusion.

There are a number of instances, where the failure of the assessee to question a fact by an affidavit or asking for right to cross-examination of the person, who had made a statement against the assessee or sworn an affidavit has jeopardised the right of such an assessee to question the truth of such statement or affidavit at a later stage by inferring that such an assessee had forfeited his right to question the statement effectively at the assessment or at the stage of first appeal.

Hence, an affidavit which is likely to be treated by the assessee as not being much adverse on the ground that it has some facts which are easily explained or that they are not that adverse or such facts can be easily disproved without the deponent being cross-examined may still come in his way, because of his failure to question the affidavit or the statement or for having failed to ask for cross-examination. Over-confidence that the facts are strong enough to rebut the statement or affidavit without specifically questioning them may not turn out to be correct.

6.7 Prepare statement of facts carefully

Marshal all the facts for each ground (addition or disallowance) and prepare a summary of the case on each such ground with a paper book with copies of relevant evidence. The facts stated should not be capable of being contradicted. As pointed out by Bernard Baruch "Every man has a right to his opinion, but no man has a right to be wrong on facts". The summary of facts is necessary to be incorporated in the part giving facts with important evidence either in the form of paper book or independently to be enclosed, where the disputed additions are heavy.

The statement of facts should be neutral and not argumentative.

A carefully prepared statement of facts itself ensures success in more than 50 per cent. of the cases and relieves burden during representation in remaining cases. Albert S. Osborn in his treatise Problem of Proof points out that "Law Study naturally emphasises the importance of knowing the law, but law practice undoubtedly emphasises the necessity of knowing facts. In the preliminary study of law, the facts of the case are necessarily assumed, but in actual practice a law suit consists mainly, not in applying law to the facts, but in proving the facts to which the law applies".

Mere listing of disallowances is a poor substitute for statement of facts. In most income tax cases, it is not the law that counts but the facts. The law follows the facts. The statement of facts serves the purpose of proof in most cases, the first impression is being formed by reading such statement of facts. The first impression is often the best impression and, at any rate, it is difficult to dislodge the same. It is the statement of facts, which serves as a brief in writing. Justice Marshall had to say about written brief in the following words:

". . . it is the brief that does the final job, if for no other reason that opinions are often written several weeks and sometimes months after the argument. The arguments, great as they may have been, are forgotten. In the seclusion of his chambers the judge has only his briefs and the law books. At that time your brief is your only spokesman."

Another judge Karl Llewelyn had this to say on statement of facts :

"it is trite that it is in the statement of the facts that the advocate has his first, best and most precious access to the court's attention. The court does not know the facts, and it wants to. It is trite, among good advocates, that the statement of the facts can, and should . . . . produce the conviction that there is only one sound outcome".

John Davis had made this remark:

"(I) cannot too often emphasise that in an appellate court the statement of the facts is not merely a part of the argument, it is more often than not, the argument itself."

But then the statement of facts should be plain and not coloured by the opinion. John Burroughs pointed out to the trap of giving coloured facts, which may backtrack on the taxpayer, when he said "To treat your facts with imagination is one thing, but to imagine your facts is another". It is important that facts must be truthful, because, if there is anything more important than facts, it is truth as was pointed by yet another thinker. The temptation to treat our own theories as facts is not easy to overcome.

A specimen of suggested statement of facts is given in the Annexure.

6.8 Lack of opportunity should be the preliminary ground

Where there is no reasonable opportunity given, this should be specifically brought to the notice both in the statement of facts as one of the first objections and as an independent ground in the grounds of appeal. Lack of opportunity is patent even where the assessee was given an opportunity to present his facts, but the final inference was not put to the assessee for rebuttal. A mere opportunity is not enough. There should be reasonable opportunity after disclosure of all materials fact in hand and the inference proposed to be drawn. As was pointed out in Varshaben Bharatbhai Shah (Smt.) v. Appropriate Authority [1996] 221 ITR 819 (Guj) at p. 832 "A proper hearing must include a fair opportunity to those who are parties in controversy for correcting or contradicting anything prejudicial to their views. If the right to be heard is to be a real right, then not only should he know the case which is made against him but he must know what evidence has been considered for drawing a presumption affecting him and he must be given a fair and real opportunity to rebut the presumption."

Lack of reasonable opportunity should be the very first specific ground taken, wherever it is possible, since it is a ground relating to jurisdiction. Where time limit for compliance is short or where further opportunity as required was not given or where copies of statements recorded though asked for were not given or where the books were in the custody of the Department without being available either at the time of return or hearing or there is such other non-observance of principles of natural justice, it should be stressed as a preliminary ground. It is often assumed that hearing a party satisfies the principles of natural justice. It is not so. The tentative inference proposed to be adopted in the assessment order has to be put to the assessee and his objections formally elicited. Such objections have also to be dealt with on merits. It is only then that the principles of natural justice can be stated to be properly satisfied, whether in respect of assessment or appeal proceedings. The principles do not admit of any exception. It is for this reason that a show-cause notice in the form of a draft assessment order often serves a better purpose of giving opportunity. But where the arguments or the conclusion in the show-cause notice are merely repeated without dealing with objections, the principles are observed only in form. It is for this reason that the absence of opportunity should be stressed.

The argument on adequacy of opportunity comes in handy, where appellate authority is hesitant to give relief on merits. In such a case, there is a chance of assessment getting set aside on this ground rather than getting confirmed.

6.9 Procedure to be strictly followed

See that the forms are properly filled in, signed, necessary court fee stamp affixed and filed before the proper Commissioner of Income-tax (Appeals) and acknowledgement obtained.

6.10 Repetitive appeal can be avoided

Procedure for avoiding repetitive appeal under section 158A may be invoked where same point is at issue for an earlier year before the High Court or the Supreme Court in the same assessee's case.

6.11 Right of remedy by way of writ

Writ is an extraordinary remedy, which is also expensive and time consuming. Admission itself is ordinarily difficult because of the availability of alternative remedy under the law except in cases where the law does not provide for a specific right of appeal. Its main use is the temporary respite, which a taxpayer gets in postponing any payment of tax, which is otherwise payable. But the courts are aware of this strategy. The Supreme Court in Assistant Collector of Central Excise v. Dunlop India Ltd. [1985] 154 ITR 172 pointed out that the court can take judicial notice of the fact that the vast majority of petitions under article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and that thereafter proceedings are prolonged by one device or the other so as to continue the benefit of the stay. Hence even where a writ is admitted, stay is often granted only subject to partial payment of tax or furnishing of bank guarantee. Writ is possible where an order is passed without jurisdiction or is mala fide or infringes a fundamental right guaranteed by the Constitution or when the statutory remedy is not adequate or onerous or time consuming. Since some subjective factors are involved in coming to such a conclusion, reaction of courts had not been uniform in admission of writ. Very often the remedy is not a permanent one with Income-tax Department correcting any error in its procedure. Writ is barred where facts are disputed. Though one is tempted to think of writ as the best remedy, when faced with exorbitant and unexpected demands, it is better to realise the labours inherent in the proceedings and the narrow area, where it can operate.

6.12 Response to notice of rectification

The Assessing Officer often issues notice under section 154 to rectify the assessment at the instance of audit, whether internal or revenue, or mistakes found by himself or inspecting authorities. Most of the mistakes are based upon controversial interpretations of law and at any rate, they are not mistakes apparent from record. In such cases, lack of jurisdiction has specifically to be pointed out by indicating that the mistake is not apparent or that the view taken is debatable and that a conclusion cannot be drawn except by a long process of reasoning. No doubt, the issue has to be met also on merits. Failure to comply with the notice may well be taken as a consent and satisfying the requirement of law, though technically non-reply need not prejudice the case of the taxpayer, who can take up the matter in appeal. Where rectification justified on facts and law is sought on a mistake within the time permitted by law, no purpose would be served in resisting it. When an omission to declare an income is rectified as a mistake apparent from record, there can be no penalty, while same addition made by way of reassessment may sometimes warrant penalty. In such cases, resistance to rectification may well be a folly.

CHAPTER 7 Summons and Survey

7.1 Summons cannot be avoided

The Assessing Officers often issue summons and take statement on oath where normal enquiry would have elicited the facts with lesser inconvenience to the taxpayer. It may, however, not be forgotten that section 131 vests the Assessing Officer with powers of the court to enforce attendance and examine the taxpayer on oath. This can be done by issue of commission as well. The Punjab and Haryana High Court in Gheru Lal Bal Chand v. ITO [1982]

137 ITR 190 had taken the view that the powers of summons cannot be exercised, unless the assessee refuses or evades to co-operate but that was in the context of a case, where the summons was issued consequent on survey proceedings. Section 133A(6) specifically provides, that such powers are available only where a taxpayer refuses to give a statement or affidavit during survey. As otherwise, it is not ordinarily possible to question the right of the Assessing Officer to summon any one in connection with assessment proceedings because the courts are bound to conclude, that the Assessing Officer is the best judge as to the circumstances in which such power should be used. Similarly, when books are required to be produced by an order under section 131, though they could have been asked for under section 142(1) as well, it is not ordinarily possible for the assessee to question the right of the Assessing Officer as to the relevancy or otherwise, though it is unfortunate that some Assessing Officers issue summons freely and in a routine manner, even where an intimation of an appointment would have served the purpose or where the top personnel are needlessly summoned, when information could be got by a letter. But a summons is required in law to be complied with. However, the right under section 131 can be exercised only in respect of pending proceedings.

7.2 Legal assistance can be ruled out

A witness summoned has no right of representation by counsel. During recording of the evidence, it is open to the Assessing Officer to refuse assistance of a counsel during such examination as was held in V. Datchinamurty v. Asst. Director of Inspection, (Intelligence) [1984] 149 ITR 341 (Mad) and reiterated by the Supreme Court in a central excise case in Poolpandi v. Superintendent, Central Excise [1992] 62 Taxman 447.

7.3 Need for care in statement on oath

Any statement on oath taken in response to summons can be used against the taxpayer for purpose of not only his own assessment but also in case of others, subject to cross-examination by the affected party. If the statement contradicts any other statement on oath or a verified statement like in an income-tax return, charge of perjury will lie without the prosecution having to prove which of the two statements is false.

Care has, therefore, to be taken while replying when such replies are recorded. A deponent on oath has right to read over before affixing his signature and clarify any matter by his own note while signing. Such right should always be exercised. If any statement is incorrectly recorded or any correction or clarification is not agreed to be recorded, such correction or rectification should be made immediately thereafter.

7.4 Rights of occupants of premises surveyed are limited

It will be open to the Income-tax Department to survey any place, where business or profession is carried on by the assessee or where any part of cash, stocks or other valuable articles or things relating to the business or profession are kept. Since taxpayers claim to do business even in their residence by claiming expenses relating to telephone at their residence, premises left out of the scope of survey can only be very limited. Survey could be done only during regular hours of business or profession. If there be no such regular hours, it has to be done during day time after sunrise and before sunset. Survey-officers have the power not only to inspect books but also place marks of identification, verify cash, stock or other valuables, make an inventory or call for any information or record.

It is not uncommon for the survey officers to record selective information specifically asked for. In such cases the assessee may bring on record correct facts immediately after survey, if the survey officers do not record the correct facts or further clarification is required in the statement already made. Such clarification has to be considered by the Assessing Officer, when dealing with survey report in due course.

It is not necessary for the taxpayer to make a statement admitting or denying any concealment of income, because survey officers are not concerned with computation of income. It is not uncommon for the books to be incomplete but it is always better to attempt to reconcile the existing cash or stock with reference to other records like bill books, purchase vouchers, etc., with the accounts written up to the date on which the survey was done. This may be done immediately after the survey also, if sufficient time is not given for reconciliation by the authorities.

7.5 Post-survey exercise

Where there has been a survey, the taxpayer ordinarily needs the information that has been gathered from him, whether in matters of any stock or as regards maintenance of accounts as to whether it has been up-to-date, etc. Where there is prima facie liability on such survey in respect of years for which return has already been filed and time is available for revised return, the assessee is best advised to file such revised return and thereby limit the interest which may otherwise be payable, but also avoid possible penalty and even prosecution. Even where the time is not available for revised return, the assessee by filing the return and inviting regularisation of the same by issue of notice under section 147 will become entitled to waiver of penalty under section 273A of the Income-tax Act and thereby avoid prosecution. Where the issues are complex and the amount of evasion is large not being less than Rs.1 lakh, possible recourse to the Settlement Commission is again a matter which would require consideration. Where the taxpayer is unable to explain certain discrepancies on the spot but is able to reconcile the same or explain any statement which he had inadvertently made during such survey, it is best that the matter is reconciled or explained even without any notice from the Revenue, since what is explained shortly after the incident carries better conviction.

CHAPTER 8 Search--Before and After

8.1 Be prepared for a search

The use of the power of search has been held to be constitutional and this is being increasingly employed. It is therefore necessary for the auditors to prepare their clients to expect a search at any time. Lack of preparedness is likely to shock the taxpayer, losing thereby control of the situation and making all kinds of admissions or giving confusing answers so that a lot of time is taken to straighten out the matter. Preparedness would also ensure that unnecessary and useless papers are not kept, since such papers may pertain to transactions about which he may have no memory. Taxpayers are best advised as to their rights under the law to check the search warrant and also the identity of the persons executing the search with reference to their identity cards, which they are expected to carry.

A taxpayer for whom a search is not a surprise will be able to deal with it calmly and also be co-operate with the search officers, while protecting his rights.

8.2 Commitment on uncertain facts unnecessary

There is a common temptation to answer queries for which the occupant lacks information. For example, the occupant who is head of family does not have exclusive possession of the entire premises himself and ordinarily is not aware of the cash, jewellery or other valuables possessed by his wife, sons, daughters and daughters-in-law and even married daughters in the premises. For example, any commitment on his part as to the cash available with reference to his own moneys may lead to an inference that he is giving a false statement, when additional cash is found in the place. Similarly, there are many past transactions, the details of which cannot be lightly recalled without the assistance of account books and documents and may require even consultation with one's own accountant or auditors. While it is incumbent upon the taxpayer to answer all the queries, there is no such compulsion to

hazard a guess. He may seek assistance of accounts and other records or consultation with persons more familiar with facts, before making any commitment on the facts.
The computation of income is a highly technical process and any admission as to the extent of concealed taxable income by making wild estimate is something which is not necessary under the law. The assessee cannot be compelled to admit any concealment. Though the provision against self-incrimination is not available at the stage of enquiry, it is equally clear that the taxpayers often make statement against their own interest on misguidance from the search officers or on their own, because of the wrong notion that they must give details even when they are not sure of the same. Admission of suppressed income taken during search may ultimately justify the Income-tax Department not only to reopen the assessment, but also to levy penalty or subject the taxpayer to prosecution. Retraction may not be possible or advisable, where the admission is corroborated by evidence. Taxpayer should be aware of the consequences of such admission, since persuasion on the part of the Assessing Officer by offer of immunity from prosecution is not unlikely, while they have no power or authority to make such offer. These are matters which the taxpayer should be aware.
Statements made by taxpayers during search in the belief that such statement would protect them from penalty or prosecution, most often could well be the only or the most vital piece of evidence against the taxpayer. It is necessary that taxpayers are briefed by the profession as to rights of persons during search as a normal exercise without waiting for an occasion, so that it may not turn out to be too late.
8.3 Be aware of rights during search
The Income-tax Department itself has spelt out the rights and duties of persons during search with charter of rights published in this regard.
A charter of the Rights and Duties of Persons Searched issued by the Income-tax Department should be useful. After omitting certain rights which are no longer available consequent to changes in law, surviving rights from the charter are reproduced later under this paragraph.
There is very little which a tax adviser or a tax expert could do during search. He is not expected to interfere with the conduct of search or give advice to the occupants in the place of search, unless he is permitted to participate in the search without interference or permitted to give advice by the officers in-charge of search. It is the duty of every person who is familiar with tax laws to advise proper conduct in the event of search, because searches are becoming more and more common in view of the increasing reliance placed on surveys and searches for enforcement of law. A taxpayer should know his rights as well as his duties. These are best found in the Taxpayer's Charter issued by the Income-tax Department itself, which reads as under:

Charter of rights and duties of persons searched
Rights of the person searched
To see the warrant of authorisation duly signed and sealed by the issuing authority.
To verify the identity of each member of the search party.
To make personal search of all members of the search party before the start of the search and on conclusion of the search.
To insist on personal search of ladies being taken only by a lady, with strict regard to decency.
To have at least two respectable and independent residents of the locality as witnesses.
A lady occupying an apartment being searched has a right to withdraw before the search party enters, if, according to custom, she does not appear in public.
To call a medical practitioner in case of emergency.

To allow the children to go to school, after checking their bags.
To have the facility of having meals, etc., at the normal time.
To inspect the seals placed on various receptacles, sealed in course of search and subsequently at the time of reopening of the seals.
To ensure that the facts stated by him have been so recorded correctly, as per section 132(4).
To have a copy of the panchnama together with all the annexures.
To have a copy of any statement that is used against him by the Department.
To have inspection of the seized books of account, etc., or to take extracts therefrom in the presence of any of the authorised officers or any other person empowered by him.
To allow free and unhindered ingress into the premises.
To see the warrant of authorisation and put signature on the same.
Duties of the person searched
To identify all receptacles in which assets or books of account and documents are kept and to hand over keys to such receptacles to the authorised officer.
To identify and explain the ownership of the assets, books of account and documents found in the premises.
To identify every individual in the premises and to explain their relationship to the person being searched. He should not mislead by personation. If he cheats by pretending to be some other person or knowingly substitutes one person for another, it is an offence punishable under section 416 of the Indian Penal Code.
Not to allow or encourage the entry of any unauthorised person into the premises.
Not to remove any article from its place without notice or knowledge of the authorised officer. If he secretes or destroys any document with the intention of preventing the same from being produced or used as evidence before the court or public servant, he shall be punishable with imprisonment or fine or both, in accordance with section 204 of the Indian Penal Code.
To answer all queries truthfully and to the best of his knowledge. He should not allow any third party to either interfere or prompt, while his statement is being recorded by the authorised officer. In doing so, he should keep in mind that--
(i) If he refuses to answer a question on a subject relevant to the search operation, he shall be punishable with imprisonment or fine or both, under section 179 of the Indian Penal Code.
(ii) Being legally bound by an oath or affirmation to state the truth, if he makes a false statement, he shall be punishable with imprisonment or fine or both under section 181 of the Indian Penal Code.
(iii) Similarly, if he provides evidence which is false and which he knows or believes to be false, he is liable to be punished under section 191 of the Indian Penal Code.
To affix his signature on the recorded statement, inventories and the panchnama.
To ensure that peace is maintained throughout the duration of the search, and to co-operate with the search party in all respects so that the search action is concluded at the earliest and in a peaceful manner.
Similar co-operation should be extended even after the search action is over, so as to enable the authorised officer to complete necessary follow-up investigation at the earliest.
8.4 Post-search course of action
Search often is the beginning of a period of trial and tribulation for the taxpayer. Post-search investigation will be undertaken by the authorised officer before he finalises his report on the search. It is on the basis of such report, further action is taken by the Assessing Officer. It is not that in all cases, such recomputation or reassessment may be justified. The statements made may have to be carefully analysed and retraction where justified has to be made at the

earliest opportunity by writing to the search officers, the Assessing Officer and the Commissioner, who has authorised the search.

Allegation of compulsion or any explanation for the statement at too late a stage may not carry conviction. Use of compulsion during search is a fact admitted by the Raja K. Chelliah Committee and the Public Accounts Committee. At the same time where admission is corroborated or is otherwise proved, allegation of compulsion or coercion could hardly serve any purpose. There is usually indiscriminate seizure of all materials, letters, papers, etc. Every document found would require explanation as it is usually examined with a high degree of suspicion, that it may relate to unrecorded transactions. Even school homework done by the children or telephone numbers have sometimes been suspected to be such unaccounted income, sale or deposits. Every piece of paper needs explanation. Same transaction may be recorded in different papers at different times or found in different places.

Data may have to be classified and reconciled in the manner of solving a jig-saw puzzle. Hard work will pay since it will help to remove many doubts and misgivings. Even where concealment is found, it will help to reduce liability to a large extent, because any lack of correlation gives a whip hand to the tax department, which is tempted to make an estimate of astronomical dimensions, where the precise concealment cannot be quantified. Such quantification is largely the burden of the auditor with the taxpayer's assistance. Not much of law is involved in such cases, since the drawing of proper inference from the facts is more vital.

8.5 Post search block assessments

Chapter XIV-B of the Income-tax Act, 1961, prescribes the methods to be followed in respect of post search assessments, which can be made for a block of years starting from the date on which escapement of income is noticed till date of search. Undisclosed income of the entire period will be taxed in a single assessment at 60 per cent. as tax without any separate liability for interest for past defaults. The procedure in respect of searches made on or after September 1, 1997, require filing of return within time and also a correct return, if one were to avoid interest for belated return and penalty for understatement of income. Liability for block assessment is not limited to the persons searched but also to any third party, whose assets or records may be found in the premises searched. While the person searched may be proceeded against under section 158BC, such third party which may include members of the family or a total stranger can be proceeded against under section 158BD.

Filing a lower return in anticipation of convincing the Assessing Officer or hoping for non-discovery of escapement of income from the materials seized may invite penalty. It is better that care is taken to return an income, which would be capable of being defended.

8.6 Safeguards in respect of block assessments

The occasion of search and block assessment could be best utilised to iron out any discrepancy in the return already filed. It is better that the entire seized materials and statements recorded are scanned and return is prepared with due care so that such return would be capable of being accepted. The time for filing the return which extends to 45 days from the date of survey should be utilised for the following purposes:

(1) Scan all the materials by requesting permission to inspect the records with a view to ensure that none of the entries in the books or documents seized give rise to any inference of concealed income. Where such inference cannot be rebutted, it is best offered for tax.

(2) It is necessary that all the statements recorded should be seen. Wherever there is admission, which would give rise to liability, it is best offered as income unless such admission is clearly capable of being retracted with sound materials with admission itself being explained as having been made under circumstances, which would carry conviction.

Where there is retraction, it should be done as soon as the assessee gets a copy of the statement or even before such copy is received, where the person who has made the statement recalls some mistaken facts admitted by him. The earlier such correction is made, the better it is for him, since it would carry greater conviction.

Where it is not possible for the taxpayer to avoid inference of escapement of income, a practical course of action is to admit the same and thereby avoid controversies apart from interest, penalty and prosecution. But where the assessee has an explanation, there is absolutely no need for admitting the same even if the Assessing Officer should hold a different view. The addition can be resisted in appeal.

Where computation of income is complex and escapement is not less than Rs.1 lakh, possible recourse to Settlement Commission should be examined.

Since section 158BG provides for previous approval of the Joint Commissioner or Joint Director for searches made on or after January 1, 1997 for an assessment, opportunity should be taken by requiring a hearing before him so as to avail the possibility of convincing him on controversial matters, where the Assessing Officer himself is not convinced. This would enable an administrative remedy other than the statutory one by way of appeal after the assessment. Some supervisory officers are receptive and such chance should be availed by seeking interference in writing, wherever possible. Though pre-assessment intercession under section 144A by Joint Commissioner, where he himself is not an Assessing Officer, is not specifically made available for block assessment, one may seek his interference, wherever it is possible, so as to temper excessive zeal of the Assessing Officer.

CHAPTER 9 Keeping recovery proceedings at bay

9.1 Stay - Need for timely action

Where the disputed additions are heavy, a petition for stay has to be invariably filed under acknowledgement from the Assessing Officer along with a copy of the grounds of appeal before the date on which the demand falls due, briefly mentioning the nature of the addition, the fact of appeal and the assessee's difficulties in arranging for payment.

Since the Assessing Officers are prone to reject such demands or impose impossible conditions, the assessee has to be alert to react immediately so as to forestall any coercive steps. The Assessing Officer/ Additional Commissioner of Income-tax and the Commissioner of Income-tax, one after the other may be moved in writing without loss of time for administrative remedy. Where a petition is made, copy has to be endorsed to the Assessing Officer and acknowledgment obtained from him, with a request to await the outcome of the petition to the Commissioner to prevent coercive action. Meanwhile the first appellate authority may also be requested to take up the case out of turn as soon as stay is refused by the Assessing Officer. This would ensure that before stay petition is finally disposed of by the Commissioner of Income-tax, the appeal itself may get decided. Stay has become a valuable right for the taxpayer in most cases of disputed additions. The anxiety of the Assessing Officer to collect revenue to meet his target or to maximise collection often blinds him from exercising the statutory discretion vested in him under section 220 to stay disputed tax pending decision in first appeal even in most deserving cases.

9.2 Stay can be given by appellate authority

Where the petition of the Assessing Officer as well as appeal to his administrative superior fails, petition before the first appellate authority is also feasible. There was a prevalent view that the first appellate authority cannot exercise the right, because there is an alternative remedy before the Assessing Officer. Such a view overlooks the fact that such right to have the demand stayed does not get exhausted on the Assessing Officer's refusal. It is certainly open to the first appellate authority to deal with the application on rejection of the same by

Assessing Officer or if the imposition of such terms of stay by him are too onerous for the appellant to comply. Courts now recognize this position of law, lest hasty coercive action does not render right of appeal itself nugatory. He could certainly consider the stay petition dealing with the same on merits or take up the appeal immediately for disposal, so that it no longer becomes necessary to deal with the stay petition.

CHAPTER 10 Settlement Commission--An alternative for appeal

10.1 It is an additional remedy

Appeal is a normal remedy. But the other alternatives cannot be ruled out. Such alternatives in addition to the appeal are petition for rectification, revision and resort to the Settlement Commission. While rectification can be in addition to appeal, revision petition is alternative to appeal. The petition to the Settlement Commission is also an alternative which can be exercised before or after assessment.

10.2 When can it be availed?

It may sometimes be considered wiser to approach the Settlement Commission in cases, where the additions anticipated before assessment or addition made are heavy with the prospect of probable penalty and possible prosecution. In such cases, it would be preferable to consider the option available to a taxpayer for settlement with the Settlement Commission under Chapter XIX-A of the Income-tax Act, 1961. While the time limit for first appeal is 30 days, resort to the Settlement Commission can be made at any time before an order is passed by the first appellate authority. However, in cases of searches conducted before January 1, 1997, but after July 1, 1995, the period during which there was only a direct appeal to the Tribunal, resort could not be had after the order is passed by the Assessing Officer. It is because petition for settlement will be maintainable only in matters pending before the authorities under the Income-tax Act, such authorities being the Assessing Officer or the first appellate authority and not the Tribunal.

10.3 Circumstances in which settlement is possible

It is not in all cases that settlement is possible. There should be a minimum of Rs.1 lakh as concealed income. The requirements of valid settlement petitions are as under:

(1) There is a valid proceeding pending in connection with assessment or reassessment or by way of appeal or revision in connection with such assessment or reassessment before an income-tax authority for the relevant year or years.

(2) Return of income has been furnished by the assessee for the respective year or years under any of the provisions of the Act.

(3) The additional amount of income-tax payable on account of the additional income offered before the Settlement Commission exceeds Rs.1,00,000.

(4) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing belonging to the assessee have been seized under section 132, and a period of 120 days has expired from the date of such seizure.

(5) The application is filed in quintuplicate (i.e., one original plus four copies) in Form No. 34B together with the annexure and required enclosures, accompanied by Rs.500 being the institution fee.

10.4 When is petition possible?

It may sometimes be advisable not to wait for the assessment order or the outer time-limit for filing the petition. There may be dormant issues likely to erupt on enquiry with possible penalty or prosecution angle, if discovered or established. Though it is true that it is possible to file a settlement petition, subject to the conditions thereunder even after the assessment, where concealment is established clearly and unequivocally, there will be resistance for admission, because it is one of the conditions that concealment is not already established, though in practice a mere assessment order is not considered as establishing concealment. Wherever penalty or prosecution is sensed, a petition to the Settlement Commission will ensure immunity from penalty and prosecution. It is true that in the computation of income, the Settlement Commission's decision will be final without further appeal or revision, while there is always a further appeal possible from the order of the first appellate authority. But the fact that there is immunity from penalty and prosecution may well compensate a possible higher estimate of income.

10.5 Whether petition is possible in reassessment proceedings?

An assessee may get reassessment notice under section 148, a circumstance, which should prompt the assessee or his adviser to consider the situation. It may be possible that survey operations may unearth facts, which are likely to be used in reassessment proceedings or that the Assessing Officer has received information which would clearly establish concealment. In such cases, immediately after receipt of notice, the assessee can proceed to file a settlement petition after filing a formal return, because it would ensure not only immunity from penalty and prosecution, but would have the matter settled by ignoring technicalities as to the validity of reassessment proceedings or any legal issues which ordinarily crop up in computation of income. Prolonged litigation is avoided and uncertainty sorted out by the proceedings along with immunity for penalty and prosecution usually available ordinarily without exception though the matter is one of discretion. The Settlement Commission has been taking the view that such immunity is ordinarily to be offered by overlooking any lapse prior to the petition but such immunity certainly being not available, if assessee resorts to prevarication or making false claims during proceedings for settlement. Immunity would not be available only in such cases. Interest under sections 234B and 234C are, at least, partially waived by limiting the period for which interest is leviable.

10.6 Preparation of the petition

The Settlement Commission deals with only complex cases. Where the issue is one which can be clearly resolved as a question of law or the case does not involve any complexity, this is not a matter for settlement. It is, therefore, necessary that such complexity should be clearly brought out in the petition. Such complexity may be inferable because of the difficulty in establishing the particular year to which the income relates, the hands in which it is assessable, whether in the HUF, firm, etc., absence of complete records as to the transactions, where the method of accounting is such that income is not readily inferable from the books and where there is dispute as to the ownership of the income or the assets as between the assesee's claim and departmental inference. In most cases there can be more than one such argument for urging complexity; such complexity will have to be brought out, so that admission is not a matter, which would become a problem at the threshold itself. Model draft form of petition form part of the appendices.

10.7 Procedure for settlement

The following extracts from pages 28 and 29 from the Settlement Commission and Authority for Advance Ruling by T. N. Manoharan and S. Rajaratnam would give a list of such papers as should be prepared for smoothening the process of settlement :

"The preparation of the settlement application is the most important part of work relating to settlement proceedings. The application and the professional engaged by him should put in sufficient time together to analyse and compile all the relevant data relating to the case. Apart from the other routine details that may be gathered for preparation of the application, the following could be considered as list of records and particulars that can be called for:

(1) Statements, Schedules and audit reports filed with return of income and copy of acknowledgement for filing return of income for the relevant years.

(2) Assessment orders/intimations under section 143(1)(a) for the relevant years.
(3) Copies of "panchnamas", if there had been a search.
(4) Copies of sworn statements recorded under section 132(4) or subsequently from the assessee and others.
(5) Notice under section 112A, if any, and replies thereto.
(6) Order under section 132(5) (now deleted), if any.
(7) Petition under section 132(11) and order, if any, under section 132(12) (now otiose).
(8) Notices under section 148, if any, issued.
(9) Xerox copies of important seized records and books of account for relevant years.
(10) Wealth statements whether filed or not and wealth particulars from wealth-tax file. Jewellery held and their valuation. Form O-8A or Valuer's Report (if any).
(11) Details of properties inherited or received by way of gift and properties self-acquired. Copies of documents for such properties.
(12) Records and/or Registered Valuer's report in respect of cost of construction of buildings, if applicable.
(13) Cash flow for relevant years/Investments and source for such investments--taking into consideration reasonable household expenses--year wise reconciliation with or without balance-sheets.
(14) Year-wise quantum of additional income proposed to be offered and the basis of such offer.
(15) If the assessee is a partnership firm or the assessee is a partner in a partnership firm, copy of the partnership deed or deeds together with statements of accounts and capital account details.
(16) Brief note about nature of business activities and the various sources of income.
(17) Details about family members (Family Tree) and personal expenses with special reference to any marriage or ceremony or function that has taken place during the relevant years.
(18) Details about agricultural land holdings and income derived therefrom. If agricultural income is relied upon as a source of investment, certificate from revenue authorities as to extent of holding and "pani patrak" (or "adangal") or other revenue records relating to classification of land (wet or dry), extent of cultivation, crop grown, percentage of yield.
(19) An affidavit, where the facts contrary to record are alleged, should be filed. In fact, it is specifically, permitted under rule 7 of the Income-tax Settlement Commission (Procedure) Rules, 1987.

10.8 Search and seizure cases are also covered

Search and seizure cases would involve issue of notice under section 158BC or 158BD against persons searched and those otherwise found to be liable for tax. While the Central Board of Direct Taxes, at times, questioned the jurisdiction of the Settlement Commission in matters of post-search cases involving block assessment, Instruction No. 1962, dated February 12, 1999 (see [1999] 237 ITR (St.) 124-125), has now conceded that such block assessments are also eligible for settlement.

CHAPTER 11 Non-resident Taxation

11.1 Liability of associate of non-resident

Where there is an association with a non-resident, the responsibility in respect of the non-resident may well fall on the taxpayer in India not only because most of the agreements provide that the non-resident gets a reward for his services net of taxes, but also because the law requires that tax is deducted at source on any payment made to a non-resident under section 195 of the Income-tax Act on any chargeable income. The Supreme Court in

Transmission Corporation of A.P. Ltd. v. CIT [1999] 239 ITR 587 has held that liability is limited not on the gross amounts paid to non-resident but only on the chargeable income contained therein. It is also necessary to bear in mind that section 40(a)(i) disallowing interest, royalty and technicial fees payable outside India, unless tax on such amount has either been paid or deductible at sources. It is necessary that all the options available in law are availed so that the taxpayer is not burdened with any liability which may not otherwise be borne by him.

11.2 Safeguards to be taken

It is not necessary that the taxpayer should bear the non-resident's tax, unless the non-resident requires such a stipulation. It is better that wherever final agreement is that each should bear his own tax, it should be made part of such agreement. At any rate this is a point which should be thrashed out at the stage of agreement itself.

Since in most cases the format of the agreement decides the extent of liability and the rate of tax to be adopted, care should be taken to have any agreement with a non-resident vetted before its finalisation. It may well be that the agreement contemplates supply of plant and machinery from abroad in which case there is no liability for tax on the non-resident, so that there is also no obligation to deduct tax at source. It may also be that no part of the service rendered by the non-resident is in India, so that there is no liability, unless the service is one of supply of technical know-how, which may invite liability in India because of Explanation 2 to section 9(1)(vii) which fastens liability merely because such technology is used in India. The agreement should spell out the nature of the transaction clearly and if there is liability for one part of the transaction and not the other, consideration for each is best shown separately or by different agreements so that the liability is clear and does not become a matter of controversy.

11.3 Authorisation from the Assessing Officer is advisable

Where there is a doubt, it is better to avail the provisions in sub-section (2) of section 195, which enables the payer of any amount to a non-resident to make an application for determination of tax, if any, to be deducted and the rate at which it should be so deducted. The non-resident may also be advised that he can make a similar application under sub-section (3) of section 195. If the Assessing Officer has a different perception of the liability, an appeal is exigible under section 248 of the Act, but such appeal objecting to the order directing tax deduction has to be filed after deduction and deposit of such tax with the Government.

11.4 Recourse to the Authority for Advance Ruling

In view of the fact that in almost all major cases, the non-resident would insist that his payment should be net of taxes or at least expect some assistance in matters of tax from the resident, the facility of having advance ruling should be availed, wherever it is necessary. Chapter XIX-B of the Income-tax Act inserted by the Finance Act, 1993, enables the non-resident to get a binding ruling from the Authority for Advance Ruling (AAR) on issues which may arise in determining his precise tax liability. As explained by the pamphlet issued by the Central Board of Direct Taxes styled "Taxpayers Information Series 14--Scheme of Advance Ruling for Non-residents under the Income-tax Act, 1961", the ruling is intended to help the taxpayers to avoid future dispute, time-consuming and expensive appeals. Such issues may relate to transactions undertaken or proposed to be undertaken by the non-resident applicant. The Authority for Advance Ruling is a high power body presided over by a retired Judge of the Supreme Court with two others in the rank of Additional Secretaries to the Government of India.

11.5 Procedure for the Advance Ruling

A person who is a non-resident under the Indian law is entitled to apply for advance ruling. An application may be made by a resident only if such application is on behalf of the non-resident. Hence it is open to the Indian collaborator to ask for advance ruling in respect of his non-resident associate. There is an application in Form No. 34C prescribed under rule 44E to be made in quadruplicate accompanied by a fee of Rs.500. Withdrawal of such application is possible within 30 days. The Form requires information as to the name and address of the applicant and the income-tax jurisdiction under which the non-resident will fall in case of liability. There are two Annexures to the Form, one requiring statement of relevant facts having a bearing on the issues and the other being the applicant's own interpretation of his liability. The model drafts of the two annexures form part of the appendices.

11.6 Limitations in Advance Ruling

Since it is a matter of advance ruling, once the matter becomes pending before any income-tax authority, Tribunal or court it is ineligible for an advance ruling. Hence, care should be taken to apply for such ruling in advance. The advance ruling is also not possible merely on matters of valuation or where the authority considers that the proposed transaction is designed prima facie for avoidance of income-tax.

CHAPTER 12 Beware of TDS provisions

12.1 Watch out for liability to deduct tax

An employer is bound to deduct tax from salary. Tax is bound to be deducted at source from interest, payment to contractors, deemed dividends and professional fees, etc. Payments to non-residents is beset with duty to deduct tax under some provision or other. The Finance Act, 1994, provides for tax deduction for annual rent exceeding Rs.1,20,000 per annum. There are also other categories of payments requiring tax deduction. It is therefore necessary to watch out for any liability to deduct tax and take appropriate steps, wherever necessary. The Central Board of Direct Taxes issues periodical circulars on its expectations of the requirements under various provisions. It is essential that one complies with them so as to avoid being responsible for recipient's tax liability and facing penal interest and penalty.

A chart at the end of the Chapter (at pp. 87-88) lists the responsibilities of the person, who is vested with duty to deduct tax, the circumstances in which tax need be deducted, certificates to be issued, statements to be filed and the time-limit within which these should be done.

12.2 Registration to get a Tax Number is first step

Get a Tax Deduction Account Number (TAN) by an application in Form No. 45B to the Assessing Officer or any one to whom jurisdiction has been assigned. Failure to abtain TAN numbers without reasonable cause would attract penalty up to Rs. 5,000 under section 272BB.

12.3 Non-compliance with rules may be expensive

Ensure prompt payments of tax deducted at source and file periodical statements as to deductions in time in view of stiff interest, penalties and prosecutions prescribed for omissions in this regard. Issue of proper certificate to payee within time is also mandatory. The following passage at paragraph 6 from the Circular No. 666, dated October 8, 1993 (See [1993] 204 ITR (St.) 40), dealing with consequences of non-deduction of tax at source from payments to contractor is applicable even for other deductions and, therefore, reproduced below (at p. 42):

"6. The responsibilities, obligations, etc., under the Income-tax Act, of the persons deducting the tax at source under section 194C are briefly as follows:--

(a) According to the provisions of section 200, any person deducting any sum in accordance with the provisions of section 194C is required to pay, within the prescribed time, the sum so deducted to the credit of the Central Government in the prescribed manner, vide rule 30 of the Income-tax Rules, 1962. In the case of deduction by or on behalf of the Government, the sum has to be paid on the day of the deduction itself. In other cases, normally, the sum has to be paid within one week from the last day of the month in which the deduction is made. If a person fails to deduct tax at source, or, after deducting, fails to pay the tax to the credit of the Government, he shall be liable in accordance with the provisions of section 201(1A) to pay simple interest at fifteen per cent. per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid. Further, section 271C lays down that if a person fails to deduct tax at source, he shall be liable to pay, by way of penalty, a sum equal to the amount of tax not deducted by him. In this regard, attention is also invited to the provisions of section 276B, which lays down that if a person fails to pay to the credit of the Central Government within the prescribed time the tax deducted at source by him, he shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years, and, with fine.

(b) According to the provisions of section 203, read with rule 31, every person deducting tax at source is required to furnish a certificate to the effect that the tax has been deducted and to specify therein the amount so deducted and certain other particulars. In the case of deduction of tax under section 194C, the certificate has to be furnished in Form No. 16A with effect from July 1, 1993, within the prescribed period of one month and fourteen days to the person to whose account credit is given or to whom payment is made, by any mode, as the case may be. Prior to July 1, 1993, this certificate was required to be given in Form No. 16B which was printed by the Central Government and was to be procured from the Income-tax Department on payment of a nominal consideration. If a person fails to furnish this certificate as required under section 203, he shall be liable to pay by way of penalty, under section 272A(2), a sum which shall not be less than Rs. 100 but which may extend to Rs. 200 for every day during which the failure continues.

(c) According to the provisions of section 203A, it is obligatory for all persons responsible for deducting tax at source to obtain and quote the Tax-deduction Account Number (TAN) in the challans, TDS certificates, returns, etc. Detailed instructions in this regard are contained in Board's Circular No. 497 [F.No. 275/118/87-IT(B)], dated October 9, 1987 (see [1988] 169 ITR (St.) 54). Circular No. 781 [F.No. 275/192/99-IT(B)], dated November 5, 1999 (see [1999] 240 ITR (St.) 148) reiterates the instruction contained in the circular. If a person fails to comply with the provisions of section 203A, he shall be liable to pay by way of penalty under section 272BB of a sum up to Rs. 5,000.

(d) According to the provisions of section 206, read with rules 36A and 37 of the Income-tax Rules, the prescribed person in the case of every office of the Government, the principal officer in the case of every company, the prescribed person in the case of every local authority or other public body or association, every private employer and every other person responsible for deducting tax at source under the various provisions of the Act, shall prepare and deliver by the prescribed date, the annual return of tax deducted at source under those provisions. In the case of deduction of tax under section 194C, this return is to be furnished in Form No. 26C to the designated/concerned Assessing Officer by the 30th June, following the financial year in which deduction is made. It may be noted that a copy of each TDS certificate issued during the financial year should be enclosed with the annual return. If a person fails to furnish in due time the annual return, he shall be liable to pay, by way of penalty under section 272A(2), a sum which shall not be less than Rs. 100 but which may extend to Rs. 200 for every day during which the failure continues. The maximum penalty will, however, not exceed the amount of tax which was deductible at source".

Tax Deducted at Source--Chart

Section and Nature of payment/credit	Person responsible/liable to De-duct Tax at Source and remit it to Government	Class of Payee, tax rate applicable, and ceiling for exemption, if any	Self-declaration Form, if applicable, who is entitled to file same?	Whether payee can apply to AO for Nil or lower rate of Tax?	TDS Certificate Form, and Time-limit for issuance thereof to payee	Form of Annual Return, and Due Date	Remarks
1	2	3	4	5	6	7	8
192 : Salary	All employers	Employee. At the rate applicable to salary/income as per Form-12C	Not applicable	Yes, Form-13	Form-16. One month from the end of the financial year	Form-24, 31st May	Sec.89(1), relief can be given by specified employers Form 13 has been amended with effect from 19-11-1999
193 : Interest on securities	All disbursers of interest, other than Individuals/ HUF	*Individuals/HUF @11%. Companies @22%. Non-residents @20%. No TDS on interest up to Rs.2,500 from Indian listed Companies. Nil limit for others	Form-15H: applies to persons other than than firms or companies.	- do -	Form-16A. One month from end of month of payment. If credited at the end of the year, one week from the end of two months from the end of the year	Form-26, 30th June	Form in Col.5 is to be sent to CIT/CCIT on or before seven days from the end of the month of receipt. Form 15H as modified from 19-11-99, sustituted Form 15F from 19-11-99.
194A : Interest, other than interest on securities	- do -	*Residents other than Companies @11%. Companies @22%. Interest up to Rs.10,000 from Bank and Rs.2,500	-do.-	- do -	- do -	Form-26A, 30th June	- do -

		from others not liable for TDS					
1	2	3	4	5	6	7	8
194C : Payments to contractors/ sub-contractors	Govt., Govt. Corporations, companies, local authorities, co-op. Societies, registered societies, trusts, universities, firms	*1Advertisers and sub-contractors @1.1%. Others @ 2.2%. On payments exceeding Rs.20,000	Not applicable	Yes, Form-13C	- do -	Form-26C, 30th June	Contractors includes those in advertising, broadcasting, telecasting, carriage of goods and passengers, and catering
194-I : Rent	All payers other than Individuals/ HUF	*2Individuals/HUF @16.5% Others @22%. On payment exceeding Rs. 20,000	Not applicable	Yes, Form-13	- do -	Form-26J, 30th June	
194J : Fees for professional and technical services	All payers other than Individuals/ HUF	*3@5.5% on payments exceeding Rs.20,000	Not applicable	Yes, Form-13E	- do -	Form-26K, 30th June	
195 : Payment of Interest, other than interest on securities, to a non-resident or foreign company, and any other sum, not being salary/dividend, chargeable to income-tax	All payers	At rates specified by annual Finance Acts, in respect of different categories of income (no surcharge)	Form 15H is possible only in respect of interest and interest on securities for persons other than firms and companies.	Yes, Form-15C for bank, and Form-15D for others	Form-16A, 14 days from end of quarter in which payment is made, or two months and 14 days from the end of the month in which the sum is credited.	Form-27, 30th June	A non-statutory Form has been prescribed by Circular No.695, dated 29-11-1994. See [1995] 211 ITR (St.) 28] for application to AO, by payer for TDS at Nil or lower rate

Notes:
* Finance Bill, 2000, has proposed surcharge at 15% so that the proposed rate is 11.5% in the place of 11%.

In view of the proposal by the Finance Bill, 2000, to increase the rate of surcharge from 10% to 15%, the rates for tax deduction will vary as under :

*1. Instead of 1.1% and 2.2% the new rates proposed are 1.15% and 2.3% respectively for resident individuals and HUF.

*2. 16.5% is now proposed to be increased to 17.25%.

*3. 5.5% is now proposed to be increased to 5.75%.

(1) Relevant rules are rules 26 to 37B. Rules 29C and 37 have been amended with effect from 19-11-1999 (see [1999] 240 ITR (St.) 138, 140). Form 15F is modified by 15H, which has been modified. Form 13 also stands modified, while a new Form 15AA is introduced.

(2) Following sections relating to TDS are not included in the chart:

Sec. 194B	--	Lottery winning and crossword puzzles.
Sec. 194D	--	Insurance commission.
Sec. 194E	--	Payment to non-resident sportsman and associations.
Sec. 194EE	--	Deduction from National Savings Schemes,
Secs. 194F, 194K, 196A	--	Payments by UTI and Mutual funds,
Sec. 194G	--	Commission to lottery agents.
Secs. 196B, 196C, 196D	--	Payments on account of units, bonds,n shares and other foreign institutional investments.
Sec. 194L	--	Payment for acquisition of capital asset.

(3) Tax deducted has to be deposited within 7 days of actual tax deduction. Where the amount is merely credited as at the end of the year in the books as for interest or payments to non-residents, tax has to be deposited within 2 months from end of the year. Quarterly deposit is permissible for salary and interest on securities by arrangement with the Income-tax Department.

(4) Rates mentioned herein include surcharge of 10% applicable from the assessment year 2000-2001. Surcharge, however, is not leviable on payments to non-residents.

CHAPTER 13 Conduct in appeal proceedings

13.1 Importance of paper book

It is important that a paper book which should have been prepared even at the time of filing appeal is presented before the First Appellate Authority, wherever the issues are contentious or the amounts disputed are large. The paper book should contain documents issue-wise relevant for each issue. Pages should be duly numbered with the top page bearing index of papers filed for easy reference under the title bearing case name, appeal number, where available, and assessment year.

13.2 Brief yourself on facts and law

"Preparation is fully ninety percent of any case. A case well-prepared is a case half-won before going to trial. The importance of adequate preparation cannot be over-estimated".

--George L.Schmutz.

Prepare yourself adequately on facts as well as law on the subject. Conduct of appeal has to take into consideration the fact of the excessive importance attached by all Government Agencies for paper, which has sanctity in the name of documentary evidence. All relevant documents starting from extract from the books, statements furnished along with the return and other evidence for each issue with indexation of the same are most important.

It is not law, which is of importance in most cases as pointed out by Viscount Radcliffe:

"Facts and law often interpenetrate each other more thoroughly than theory allows for. Indeed the presentation and arrangement of facts constitute half the art of exposition."

You will have much better confidence to argue your case, when you are completely briefed on facts. As pointed by Bertrand Russell.

"The degree of one's emotion varies inversely with one's knowledge of the facts - the less you know, the hotter you get".

Robert H. Jackson in Terminiello v. Chicago, 337 U.S.1, 14 (1949) stressed the importance of facts in following words:

"Walk into a well from looking at the stars". To show why I think the Court is in some danger of doing just that, I must bring these deliberations down to earth by a long recital of facts "Facts are more powerful than words" as understood in the Roman Law by the Maxim "Facta sunt potentiora verbis" - It is through ascertainment of facts, justice is done, as explained in another maxim "Ex facto jus oritur"."

13.3 Update your appeal with development after filing appeal

If there is further information or authority by way of precedents subsequent to filing of appeal, prepare a short note and file the same. If fresh evidence is required to be filed, file the same along with petition for admission of the same with reasons as to why it could not be filed earlier. Rule 46A of the Income-tax Rules, 1962, bars new evidence, if not produced before the Assessing Officer, unless the Assessing Officer had refused to admit such evidence, or the assessee was prevented by sufficient cause from producing them or the assessee was not given sufficient opportunity to produce them. Hence, reasons for not having produced such evidence at the assessment stage should be such as to be covered by the rule. With spate of decisions littering from the various High Courts and the Tribunal, a fresh look on the issues before the appeal may indicate new precedents in your favour. Let not the case be lost for default in bringing such precedents to the notice of appellate officer.

13.4 Do not avoid inconvenient facts -- explain them

Put the facts clearly. Do not suppress any information which you consider adverse. "An argument may seem sound enough, but when a theory collides with fact, the result may well be tragedy" wrote Louis Nizer. In fact, it can be put at the earliest opportunity to justify the inference of the Assessing Officer and then explained as to how such information though prima facie adverse is really something, which could be explained. Any evidence suppressed has a nasty habit of turning up at the most inconvenient time and mar even an otherwise good case. Remember the maxim--Omina praesumuntur contra spoliaterem-- Every presumption is made against wrongdoer.

13.5 Do not avoid adverse decisions - Cite and distinguish them

Where the precedents are cited, do not gloss over adverse decisions. Read them carefully. You may be able to distinguish them and sometimes even find some support for your proposition in view of qualifications expressed in the decision in coming to the conclusion. Do not imagine a single authority in your favour will always clinch the issue in your favour. As pointed by Lord Mansfield "The law does not consist in particular cases, and govern the decision of them." Some representatives have the tendency to dismiss inconvenient decisions as wrong ones. Such arguments are often treated as audacious by most courts. For example, if the Assessing Officer had relied upon McDowells and Co. Ltd. v. CTO [1985] 154 ITR 148 to question an arrangement, there is no point in meeting that argument by claiming that this decision is either pending before a larger bench or that the decision has since been diluted by later ones. The proper course is to point out that the arrangement is not an artificial one and not solely or otherwise intended to avoid tax but based upon commercial considerations during course of business. Another weakness is to attempt to lay down the law by finding fault with existing law. Such arguments will serve no purpose, since the role of the advocate or the representative is a limited one.

13.6 A professional person is expected to be neutral

As a counsel or a professional person, remember that you are expected to be neutral and fair and have to play not only the role of an advocate but also as a person who is expected to assist the judge to come to a fair conclusion. Every advocate is an officer of the court and a Chartered Accountant or an Income-tax Practitioner does not necessarily have a different role before an appellate authority.

Tax proceedings are not based on adversary system, where the judge merely acts as an umpire on the basis of evidence offered by both the parties. It is more inquisitorial, where it can investigate the facts. In such a case, the professional does not treat revenue as an adversary during the hearing as long as both the parties have the opportunity to comment, to challenge and to combat the same.

What has been stated to be lawyer's role in the following words in Kanpur Income tax Bar Association v. Union of India [1999] 236 ITR 848 (All) should apply for any professional.

"The Bar and the Bench are joint guardians of the rule of law. A judge is obliged to be fair, fearless and impartial. To achieve fairness and impartiality a judge must be totally free from bias and should be totally detached and dispassionate. As an officer of the court attempting to assist the court in rendering fair and impartial justice, the lawyer too must possess detachment and objectivity. This attitude of detachment and objectivity suffers a serious set back when a lawyer or the bar association as such gives up the role of a counsel and steps into the shoes of a client/clientele and becomes a litigant himself/itself. A lawyer's office is badge of honour and a patent of trustworthiness derived from his position as an officer of the court. The court is entitled to expect the highest rectitude and caution on the part of a lawyer."

13.7 Meet the objections squarely and fairly

Where the Assessing Officer relies upon certain documents or information, do not dismiss them offhand, deal with them carefully. Similarly, every legal argument should not be lightly brushed aside. They have to be met. A professional person has first to convince himself about the soundness of his client's case. He bears no responsibility for the correctness of the law that has been decided. All that he has to do is to have a fair case based on the validity of the argument and the facts of the case and deliver such argument with sincerity, as was stated by Justice Ackner:

"You have to have a certain amount of conviction as to the validity of your arguments, otherwise you'd find it extremely difficult to put them in a convincing way."

There is no need for the lawyer to take responsibility for each issue or to have a personal viewpoint different from that of the argument he is presenting. It is stated in one of the treatises on the role of the lawyer as under:

"The lawyer . . . is not an umpire, but an advocate. He is under no duty to refrain from making every proper argument in support of any legal point because he is not convinced of its inherent soundness. . . . His personal belief in the soundness of his cause or of the authorities supporting it, is irrelevant."

One should be detached enough to follow an old advice as to the role of advocate:

"As an advocate one is paid to put one's client case as well as one can within the bounds of honesty. One is not concerned with the results as a matter of policy. It's for the judges to know that."

There is always a tendency to gloss over an opponent's argument as either likely to be overlooked by the appropriate authority or as not deserving any argument to counteract the same. Either decision is likely to prove expensive.

If a doubt as to the correctness of the argument comes from the presiding officer himself, it becomes more necessary to deal with it squarely and, if necessary, by asking for an adjournment or fresh hearing.

Experience has shown that the taxpayer has often got more facts in his favour than what is indicated in the Assessing Officer's record or even in the lawyer's brief.

13.8 Inspection of records may advance your case

Ask for inspection of the records, wherever it is likely to be of help as in matters relating to claim for lack of jurisdiction under section 148, or allegation of lack of opportunity, which may be proved with reference to order-sheet or such other records. Place a specific request for inspection of records before the first appellate authority with a copy to the Assessing Officer or vice versa before the appeal is decided, where it is found that the record will help the taxpayer's claim. A request for inspection or for a copy of local enquiry report, report of the survey officers, appraisal report, etc., may sometimes help the taxpayer as they may be contrary to the conclusion of the Assessing Officer. Past records may also be of help. The knowledge of such past records is necessary as it would help the appellant to ward off any inconvenient fact emerging from the same.

13.9 Ask for cross-examination on statements taken at the back of assessee

A specific request has to be made for cross-examination, where the officer relies upon a statement taken at the back of the assessee. Even where copy has not been given, a specific request should be made for the same. There is a plea bordering on superstition that a statement taken at the back of the assessee or one taken by the inspector is not authorised by law and that such a statement is not worth the scrap of paper on which such statement or report is recorded. Since the Assessing Officer is entitled to investigate and gather all relevant materials for his assessment even at the back of the assessee and is only obliged to put them to the assessee before assessment, such information cannot be lightly disregarded. It may be that such information may not be good enough for an adverse inference or for prosecution against the taxpayer but that is no reason at all for assuming that they have no relevance for the assessment.

Cross-examination where undertaken, should be fair and confined to relevant facts lest the sympathy of the appellate authority is lost. Where no examination has been done of a witness, whose statement or accounts are relied upon, it is more an examination than cross-examination. Failure to cross-examine a person, who has made an adverse statement, may mean acceptance of his statement. The object of cross-examination is to test the veracity or accuracy of statement already made and elicit the correct facts which are favourable.

13.10 Burden of proof on facts is on the taxpayer

Arguments relating to onus should be underplayed. Let no grounds of appeal or the arguments rely too much on burden of proof or onus as being on revenue. There is a tendency to overstress this argument, which is, more often than not, an attempt to take advantage of weakness in the assessment order rather than on the innate strength of the assessee's case. Ordinarily, since the facts are in possession of the taxpayer, the burden of proof could only be on him. Even in such cases, a lawyer is prone to urge that the burden is not on his client, but such an argument is not likely to impress a departmental authority like the first appellate authority. Even otherwise, the law as to when the burden shifts is subjective and complex.

It must be remembered that the burden of proof becomes important only if (i) there is no evidence on either side; or (ii) such evidence is so equally balanced so that, in either case, the person on whom the onus lies, loses the case. By taking the argument based on onus, you are practically conceding that the facts cannot conclusively establish your stand and that, either there is no evidence in your favour or the evidence is equally balanced.

Further, any discussion as to the onus involves a question of law and your claim, which might be easily settled in your favour on facts ultimately by the Tribunal, may well have to go to the High Court on appeal, if the matter, is, inter alia, concluded on the basis of burden of proof.

It is sound policy to assume that in all cases, the burden of proof is on the assessee, even where it is not and lead all the evidence, because nothing is lost by such a course of action, while there is much to be gained.

It is poor tactics to expect revenue to lead evidence, when the assessee's case is strong on facts. By wrongly or even rightly assuming the burden of proof is on the other side or it has shifted, one may miss citing other facts, which might better promote chance of success. Thomas Huxley in Study of Zoology pointed out "The smallest fact is a window through which infinite may be seen."

What is true of science is true of law as well.

Though tax liability is largely based on facts, the ultimate inference may sometimes be the result of the law relating to burden of proof. It is better, if one reminds oneself of section 106 of the Evidence Act, which deals with burden of proving facts especially within the knowledge of a particular person in following words: "When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him." An illustration for that rule is that where a person is charged with travelling without ticket, it is not for the railway authorities to prove the charge but for the person charged to prove that he had a ticket on him. In Nitambia v. State, AIR 1957 All 357, a person, who was charged with smuggling under the Customs Act, because he was found to be in possession of smuggled gold with foreign markings, took the defence that he got it from a person, whom he could not identify. This was not found acceptable in view of section 106 of the Evidence Act. In Ishwar Dayal v. Rath Municipality, AIR 1980 All 143, it was found that the defendant had received money and had not accounted for it. If he could not prove what had happened to the money, he had to be found guilty, since he alone could have proved the destination of the money. When the burden of proof is sometimes on the accused even in criminal cases, where law places absolute responsibility as in cases of manufacture of medicine, etc., it is hardly necessary to point out that in all civil cases including tax cases, ordinarily the burden of proof would squarely be on the taxpayer.

In civil cases, a matter is judged on the basis of preponderant probabilities, while in criminal cases, the guilt must be established beyond reasonable doubt.

13.11 Burden of proof on law is on revenue

However, whether, on the facts which can ultimately be elicited or presumed, tax is leviable is a matter in which the burden is on the revenue. It was observed by the Supreme Court in Dy. Commissioner of Agricultural Income-tax and Sales tax v. Travancore Rubber and Tea Co. [1967] 20 STC 520 as under:

"In all cases of taxation the burden of proving necessary ingredient laid down by law to justify taxation is upon the tax authorities."

In Kischinchand Chellaram v. CIT [1980] 125 ITR 713, the Supreme Court had occasion to deal with this subject. In this case, the assessee's employee received an amount by way of telegraphic transfer. This information was conveyed to the Income-tax Officer in a letter from the manager of the bank through which the money was remitted. The letter was not shown to the assessee. It was assumed that the fact that the employee received the money justified the inference that the amount could be assessed in the hands of the employer as undisclosed income. While the relevant documents and the banker's evidence would have established the facts one way or the other, the department failed to rely upon the letter, which was not even put to the assessee. Hence, the inference was held not justified. Hence in some cases, failure to produce evidence in its custody or failure to rely on facts may lose for revenue its case, though the burden of proof on fact would lie on assessee.

One of the lengthy maxims in Roman Law would, when translated mean "let the judges answer to the question of law and the jurors to the matter of fact".

13.12 It is not prudent to rely upon mere presumptions in law

Presumptions are inferences from facts proved or admitted. But these are rebuttable and one would not be justified in placing total reliance upon presumption in one's favour. It is pointed out by Cochran, J. in Stumph v. Mantogomery [1924] 101 OKL 256 quoted in G.Vasu v. Syed Yaseen Saifuddin Quadri, AIR 1987 AP 139 in the following words: "Presumptions . . . . may be looked on as the bats of law, flitting in the twilight, but disappearing in the sunshine of facts." They are only prima facie rules rebuttable by further evidence unless made irrebuttable by law. Such irrebuttable presumptions are conclusive proof as mentioned in section 4 of the Indian Evidence Act. There is no irrebuttable presumptions as regards taxability of any item with reference to facts. The burden of proof and the presumptions arising therefrom are only rules of evidence.

The burden of proof in civil cases is based upon the concept of preponderance of probabilities, while in criminal cases the concept is that the charge should be proved beyond reasonable doubt except in cases where the law stipulates absolute liability.

An important distinction to be borne in mind between civil and criminal cases is that a falsehood is likely to do more damage in a civil case than in a criminal one. A false plea by defence can at best be construed as an additional circumstance in a criminal case, if other circumstances point unfailingly to the guilt of the accused, but in a civil case, though the burden may weigh lightly on him, the fact that something stated by him is clearly shown to be false is most likely to prejudice his case by undermining the credibility of his statements.

In civil cases, it is the duty of the plaintiff to bring the relevant evidence on record. If he fails to do so, he loses the case. There is no presumption available in his favour. He has to prove his case in respect of every item. In a criminal case the burden of proof solely rests on the prosecution. Mere preponderant probability may not be enough, if reasonable doubt as to innocence exists. There is no responsibility on the part of the accused to produce evidence except to the extent of rebutting any presumption on the basis of evidence produced by the prosecution. All presumptions are in favour of his innocence. If the prosecution does not prove its case, the accused may well be acquitted without being called upon to defend himself.

13.13 No benefit in blaming officials

Another point to be remembered is that any allegation of mala fides on the part of the Assessing Officer may only prejudice the taxpayer's case without any benefit to himself. Law is also that all actions by the Assessing Officer are presumed to be honestly done and that it is for the taxpayer to prove the contrary. In ITO v. Seth Brothers [1969] 74 ITR 836, the Supreme Court pointed out that it could not lightly accept any serious allegation of improper conduct made against public servants without proper evidence. It said, it cannot act on mere affidavits which can otherwise be effective in a writ petition. Omnia Praesumuntur rite et solemniter esse acta--all acts are presumed to have been done rightly and regularly.

13.14 Law on penalties is not always favourable

In Hindustan Steel Ltd. v. State of Orissa [1972] 83 ITR 26, the Supreme Court had set out the law as regards penalty. It pointed out such law on the subject in the following words:

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority, to be exercised judicially and on the consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

However, this liberal interpretation had probably been overworked with the result that the law on the subject of penalty came to be watered down for income-tax purposes for penalties other than concealment penalties in the decision of Gujarat Travancore Agency v. CIT [1989] 177 ITR 455 (SC), wherein the law was restated as under:

"It is sufficient for us to refer to section 271(1)(a), which provides that penalty may be imposed if the Income-tax Officer is satisfied that any person, has without reasonable cause, failed to furnish the return of total income, and to section 276C which provides that if a person wilfully fails to furnish in due time the return of income required under section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what is intended is a civil obligation, while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of section 276C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by statute proceeds on the assumption that society suffers injury by the act of omission of the defaulter and that a deterrent sentence must be imposed to discourage the repetition of the offence. In the case of a proceeding under section 271(1)(a), however, it seems that the intention of the Legislature is to emphasise the fact of loss of revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection, the terms in which the penalty falls to be measured are significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision. We are supported by the statement in Corpus Juris Secundum, Volume 85, page 580, paragraph 1023:

`A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws.'

Hindustan Steel's case (supra) was not even cited before the Court, but it will be prudent to assume that any reference to mens rea would be totally misconceived. It may well be so even for penalty under section 271(1)(c), where the burden of proof is placed on the taxpayer by the statute by reason of presumption against him whenever the assessed income is different from the returned income by Explanation to section 271(1). For levy of penalty for most tax defaults absence of reasonable cause or gross negligence may well be considered sufficient without the necessity of embarking upon an enquiry as to whether the defaulter had a guilty mind or not."

13.15 Courtesy pays

Show utmost courtesy to the appellate officer. There is an ancient proverb that all doors are open to courtesy. Let not your conduct suggest that he is ignorant of the legal provisions. Be not aggressive but persuasive. The appellate officers often require unnecessary information which provokes a representative to question such requirement. Remember that even under the Evidence Act, a judge can ask irrelevant questions. Nothing is lost by pandering to such irrelevant inquiries as the first appellate officer is bound to realise his mistake sooner or later on his own. Section 165 of the Indian Evidence Act, 1872, recognises power of the presiding judge to "ask any question as he pleases, in any form, at any time of witness or of the parties, about any fact, relevant or irrelevant" (emphasis supplied). Any attempt to decline any information on the ground that it is irrelevant even otherwise, is bound to create resistance, which is unnecessary.

13.16 Conduct in argument in summary

The advice given to a trial lawyer at page 84 of the Indian Reprint of the book The Problem of Proof by Albert S. Osborn summarises succinctly, what is required of an advocate, equally applicable for a professional in tax appeal, in following words:

"In conclusion, to summarize briefly what is discussed elsewhere, the great trial lawyer, though not necessarily a great orator, must be able to use language to produce results as a skilled craftsman uses a delicate and complicated tool. He must have sympathy, tact and courtesy, and must know men and their ways. By study, experience and a trained intuition, he will also have acquired an instant appreciation of the significance and force of evidence and will have learned its correct order of presentation. He must be able to control his temper and maintain his poise under trying conditions, and it will steady him and keep him sane if he has a sense of humor, which, however, he can hold in proper subjection. Finally, he must know, the law."

13.17 Never close the hearing on your part

As with the Assessing Officer, wherever any written representation is filed, such representation may be closed with a request for further hearing in case, the appellate authority is not satisfied with the submissions. This will enable you to address further arguments in case it is necessary by providing you with another opportunity. A legitimate ground on the basis of lack of adequate opportunity can also be raised in second appeal, where specific request for further opportunity is ignored.

13.18 Avoid frivolous appeals

Tax proceedings are mainly intended to ascertain the pecuniary liability of the taxpayer. One should approach a tax appeal merely as one concerned with dispute as to the amount of tax. Unless such amount of tax is significant and recurring, there is hardly any point in pursuing an appeal merely for establishing one's own idea of what is right and wrong. There is a saying that a lawyer never goes to law himself. A cost benefit analysis is required in respect of this matter as for all other business decisions. It is wrong to think that a taxpayer is settling a score with the Assessing Officer by filing an appeal against him. The Assessing Officers themselves are normally indifferent as to what happens to the assessments made by them.

It is best to remember that the first appellate authority has power of enhancement and to rake up matters accepted by the Assessing Officer. Hence an appeal filed may well be a provocation for unsettling matters settled by the Assessing Officer. An appellate order is also no protection on matters not covered in appeal against suo motu revision by the Commissioner in case he feels that there is prejudice to the Revenue.

CHAPTER 14 Proceedings before the Tribunal

14.1 Action on receipt of order in first appeal

Steps required to be taken before filing second appeal are the same as are required for first appeal, on receipt of appellate order from first appellate authority. An appeal filed on or after October 1, 1998, should not only be in the prescribed form but filed within sixty days accompanied by an appeal fee of Rs. 500/1,500/one per cent. of assessed income subject to a maximum of Rs. 10,000 depending upon the assessed income below Rs. 1 lakh/1 to 2 lakhs/above 2 lakhs. Where the decision is adverse, care has to be taken in preparation of grounds of appeal. Paper book is most important as the Tribunal very often assumes than an appeal is not properly prepared, if there is no paper book, where the appeal involves large amounts or a number of issues. Though paper book is not a requirement at the time of filing appeal, it is best prepared and furnished along with the grounds of appeal, since, the time available is longer (60 days) for an appeal before the Tribunal. Where it could not be filed a week before the hearing as required under rule 18(1), a petition for condonation may be filed along with the paper book. The following precautions are generally necessary.

(i) Ensure that all requisite enclosures and prescribed number of copies are filed.

(ii) Prepare paper book, wherever necessary, properly paged and indexed.

(iii) A certificate is required that the paper book does not contain any paper not produced before the authorities below. Where any protest is likely to emanate from the other side, a separate petition in respect of admission of such paper with reasons for non-production of the same before the authorities below, may be filed. Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963, disentitles parties to produce additional evidence and such evidence may be admitted by the Tribunal only if the authorities had decided the case without giving the assessee sufficient opportunity.

(iv) The challan or receipt of payment of prescribed fee is to be enclosed.

14.2 Drafting grounds

(i) The grounds of appeal have to be concise and not argumentative as per the rules. There is no provision for statement of facts. All the same, the grounds should not be too sketchy.

(ii) While the grounds should not be argumentative, nothing prevents the facts to be stated in a summary manner while raising a ground.

(iii) Each relief with separate heading may be separately numbered with separate sub-numbering of different grounds for each such relief.

(iv) The requirement that the grounds should not be argumentative does not mean that a separate or independent ground for each argument for claim of relief should not be taken. A decision which ought to have been followed may be subject matter of an independent ground. Similarly, a decision which has been wrongly applied may be cited and a separate ground taken. In other words, each distinct argument, or a direct authority, or a mistaken reliance by the authorities below on a distinguishable precedent can each be presented as a separate ground. It is not wise to under-estimate any particular ground, because as pointed out by Dr. Johnson:

"You do not know a cause to be good or bad till the Judge determines it . . . An argument which does not convince yourself may convince the judge to whom you urge it; and if it does convince him, why, then. . . . you are wrong and he is right . . . A lawyer is to do for his client all that his client might fairly do for himself if he could."

(v) It should be remembered that in view of the fraility common with all Judges, arguments raised during the hearing or the papers found elsewhere may be lost sight of. Grounds of appeal are hardly ever likely to be overlooked. It is for this reason that the preparation of grounds of appeal is the most important part of appeal to the Tribunal.

(vi) Examine the scope for availing the right under section 158A to avoid repetitive appeal on same point in the same assessee's case.

(vii) Examine the scope for filing cross-objection discussed in 14.6 infra.

14.3 Right to file additional ground

(i) Right to file additional ground is available and may be resorted to, whenever there is a development of law, which is required to be specifically brought to the notice of the Tribunal, even though this could even otherwise be presented during the arguments.

(ii) Additional ground is mostly necessary where alternative relief has not been claimed earlier. When the representative apprehends an adverse trend before the Tribunal, he will find it judicious to file additional ground on the spot, if necessary, before the appeal is disposed of. Though filing of additional ground at a late stage is often beset with possible opposition from the other side and even by the Bench, the law on the subject is well-settled, as long as acceptable reasons are advanced for not having filed it earlier. Matters of jurisdiction could be raised at any stage. So is a question of law. Additional ground may compel the Tribunal to give its attention to a particular aspect of the case which it, otherwise, may be tempted to gloss over.

(iii) The Tribunal has power to call for evidence on its own being a fact-finding body. This power may be sought to be utilised by requesting the Tribunal to ask for evidence. For example, a statement made or recorded during survey or search or an inference of the search officer during search, as recorded in an appraisal report, might help the taxpayer. He might have come to know of this piece of information or evidence at a later stage. While he himself would not be able to get the evidence or even if he does, admission of such evidence is bound to be a matter of controversy, resort to the use of the Tribunal's powers may be more practical. In such cases, a formal petition should be filed before the Tribunal.

14.4 Raising alternative ground

An alternative ground should always be raised wherever possible. For example, when an outlay is claimed as revenue expenditure, it may be possible to claim depreciation as an available alternative ground, even if it were held to be capital expenditure. Such outlay may well qualify for depreciation.

M.B. Abdulla v. CIT [1990] 183 ITR 96 (SC), illustrates the consequences of failure to raise an alternate ground, at least, at the stage of second appeal before the Tribunal. In this case, the value of gold, which was disowned by him but found in his car was treated as his income. His appeal contesting the inference that it was his income on the ground that it was placed in his car without his knowledge failed both before the Customs and the Income-tax authorities. The Tribunal did not accept the assessee's case. Only after the Tribunal's order, a miscellaneous petition was filed before the Tribunal on the basis of the Supreme Court decision in CIT v. Piara Singh [1980] 124 ITR 40, wherein it was found that what was confiscated could be allowed as a deduction in a smuggler's case. The Tribunal pleaded its inability to reopen the matter to entertain the alternate argument. The High Court and later the Supreme Court agreed with the Tribunal on the ground that jurisdiction under section 254 available to the Tribunal was not wide enough to justify the introduction of an alternate claim after the order. Only mistakes apparent from record could be dealt with thereunder. The Supreme Court found that there were two issues involved in this case. One was whether it was income at all and the other that if it was income, whether the loss could be allowed. The issues were different and the second issue, not having been raised or dealt with, could not be considered, while exercising jurisdiction under section 254(2). What was not the subject matter in the regular appeal could not become a subject matter in an order under section 254(2). It is interesting to note that the Supreme Court pleaded its helplessness. The Supreme Court felt that the decision of the Tribunal was correct as a matter of law.

Though in such cases, it is better that such alternate grounds are raised even before the first appellate authority, which has plenary power to admit any bona fide additional ground, which was not agitated before the Assessing Officer, the last forum available for raising an alternate ground is the Tribunal.

Even where the assessee is successful before the first appellate authority and the matter comes before the Tribunal by way of second appeal, it may be worthwhile to raise any alternate ground by way of cross-objection or during the hearing, preferably in writing.

The mistake, which is bound to be committed is the fear of psychological impact on the part of the appellate authorities, where an alternative ground is raised. It is sometimes felt that raising an alternative ground almost concedes the case by giving an impression of weakness in the case. Ever granting that there is such a possibility, this is a risk, which has to be taken considering that the alternate ground, which may give at least a partial relief, may well be lost, if not raised in time.

14.5 Power of stay

A heavy disputed demand confirmed by the first appellate authority is a matter which can cause great anxiety. Though the Tribunal has inherent power of stay, it can interfere only where refusal is likely to cause irretrievable damage making the right of appeal itself meaningless. Hence, the assessee does not have right of stay of disputed demand as a matter of course. The nature of the addition sustained and the damage it would cause, if stay is not granted, should be clearly brought out in a petition for stay. Since the Tribunal insists that administrative remedy should be exhausted, a petition detailing the circumstances for grant of stay should be filed before the Commissioner of Income-tax and only after he refuses stay or imposes conditions beyond the capacity of the assessee and, therefore, not acceptable, a stay petition before the Tribunal, in the non-statutory form prescribed for the purpose, has any chance of success. In all these cases, the appeal is bound to be heard out of turn. The assessee should be ready for such early hearing and any request for adjournment is bound to be difficult to be conceded in such cases. An application for stay of demand by the Appellate Tribunal should be accompanied by a fee of Rs. 500 with effect from 1.10.1998 under section 253(7) of the Act. An application for stay of demand by the Appellate Tribunal should be accompanied by a fee of Rs. 500 with effect from 1-10-1998 under section 253(7) of the Act.

14.6 Right to file cross-objection

(i) It is possible that the Department might file an appeal, while the assessee may choose to accept the order in first appeal though some of the minor additions have been upheld. A departmental appeal provides an opportunity for cross-objection within 30 days of receipt of the memorandum of departmental appeal by the assessee. A reappraisal of the order of the first appellate authority so as to raise a ground which was earlier intended to be abandoned may be raised by way of cross-objection.

(ii) Cross-objections are often filed merely to support the order of the first appellate authority. This is not necessary. But it may be advisable in some cases, where the first appellate authority has decided the issue on a ground different from what was canvassed. For example, an assessee might have objected to an addition on grounds of jurisdiction as well as merits. If the relief has been allowed on either ground, the other ground may be taken by way of cross-objection. Even this is not necessary, as it is open to the respondent in an appeal to defend the order of the first appellate authority on grounds different from what had convinced him. But a cross-objection ensures closer attention and avoids the possibility of any argument being overlooked.

(iii) Even where the taxpayer had got reconciled to a confirmed addition, because it has been partially successful, provision for cross-objection provides an opportunity, when it is filed in prescribed form without appeal fee within thirty days of receipt of notice of departmental appeal. Time limit is relaxable for sufficient cause. Right to cross-objection is a valuable right and should be used, wherever it is advisable.

14.7 Representation

There are quite a few procedural requirements which have to be observed:

(i) The Tribunal is particular about dress regulations for the representatives.

(ii) Proper filing of Vakalatnama (authorisation) well in time is necessary, since an application for adjournment from a person who has not filed Vakalatnama may be dismissed even for this reason.

(iii) Where there is a delay, even if it is a very short one, say, a day, an application for condonation must be filed with elaborate reasons supported by an affidavit, since condonation is not a matter of right or routine and is likely to be opposed by the other side. It should not be taken for granted, that delay will be condoned as a matter of course.

(iv) The petition for early hearing can be filed even where the disputed tax has been paid for reasons to be stated in the petition.

(v) It is advantageous to have the appeals, covering a number of years on the same point, or where the same amount is taxed in two cases belonging to the group, one of them possibly protectively, heard together. In such cases, a request can be made to have all such appeals bunched for hearing together. Such requests are usually entertained. Such a course would not only enable clearing of more than one appeal by the Tribunal, but may even help to establish the facts in proper perspective.

(vi) Proceedings before the Tribunal are more form-oriented. The representative should brief himself as to the proper form of address and the proper procedure. Interruptions when the other side is on its legs is normally frowned upon, but it may be justified where correction is required of a wrong statement of fact.

(vii) In rare cases, a witness may be required to be examined or evidence to be summoned. In such cases, a petition may be filed for the purpose, e.g. where a statement has been taken behind the back of the assessee and relied upon without giving a chance for cross-examination. The Tribunal, may then remand the case or have the witness examined before it.

(viii) An important point to be noticed is that an affidavit filed by the other party, if not questioned with a request for cross-examination, is likely to be accepted. Similarly, affidavit by the assessee cannot be lightly disregarded. Hence, affidavit may be necessary in cases, where the entire case rests on verbal evidence or where a wrong statement of fact has gone into the records and referred to in the assessment or appellate order. In this context, Rule 29 which bars such affidavits except for reasons of lack of opportunity should be remembered. Petition for taking the affidavit on record with reasons for filing it before the Tribunal is advisable.

(ix) After receipt of order, scope for miscellaneous petition, where there is an obvious mistake on facts or in law, may be examined. As otherwise, the only other remedy now is to file an appeal to the High Court under section 260A in substitution of a reference under section 256 with effect from October 1, 1998. Such appeal is available only on a "substantial question of law". In rare cases, a writ may be possible against an order of the Tribunal on failure of procedure.

(x) The pitfalls in representation is to take patently wrong arguments, being too long-winded and to be confused about one's own facts and arguments as were brought out in the satirical verse by Lord Eldon :

"Mr. Leach made a speech,
Angry, neat, but wrong;
Mr.Hart, on the other part,

was prosy, dull and long.
Mr. Bell spoke very well,
Though nobody knew about what;
Mr. Trower talk'd for an hour,
Sat down, fatigued, and hot.
Mr. Parker made the case darker,
Which was dark enough without;
Mr. Cooke quoted his book,
And the Chancellor said, `I doubt.'"

14.8 Appeal to the High Court

An appeal has been substituted for reference with effect from October 1, 1998. Such appeal is permissible only on a substantial question of law. It has to be accompanied by the fee as may have been prescribed for civil appeal in the High Court, where appeal is filed, vide section 260A of the Act introduced by the Finance (No. 2) Act, 1998, and as amended by the Finance Act, 1999, with effect from 1-6-1999.

The following safeguards are necessary:

(i) Appeal should be on grounds of law and not of fact.

(ii) The issues have to be carefully drafted to bring out the legal controversy before the Tribunal.

(iii) Each issue on which a decision is sought should be specifically raised.

(iv) Where an inference on facts is appealed against, the issue should be so framed as to whether the inference is not perverse and not warranted on facts. A decision on facts can be questioned only where inadmissible evidence is admitted or evidence which ought to have been admitted has not been admitted or the decision is perverse.

(v) Where the procedure followed in hearing does not accord with judicial requirements as by non-observance of principles of natural justice, there is scope for appeal, though not specifically provided. A writ may also possibly be filed in such cases depending upon the facts.

(vi) The facts which prompted the appeal should be concise, so that all the necessary information relevant for determination of the issue is available to the Court. It should be borne in mind that no information or evidence not already available in the Tribunal's record would ordinarily be entertained by the High Court.

CHAPTER 15 Miscellaneous duties of a tax division

15.1 Functions are numerous

Tax advice relating to tax planning, organising the work relating to timely compliance on due dates, ensuring tax deduction at source, payment of the tax so deducted within the time and sending connected statements within the statutory time limits, preparation of return, pursuit of remedies on receipt of assessment orders, rectification orders, appealable orders, etc., connected with normal tax practice are duties, not in the least, exhaustive. In addition, there are other duties which are cast upon the tax representative in connection with which both advice and implementation may well be the responsibility of the tax advisor.

15.2 Tax clearance certificate

Section 230A provides for the tax clearance certificate to be obtained by the transferor before any transfer of any property involving value of more than Rs. 5 lakhs is made. There is a mandate to the registering officer not to register the same unless such tax clearance certificate is produced before him. Such certificate is required not only for sale but also for gift and mortgage. It is not unusual for taxpayers to bring down the consideration to below Rs. 5 lakhs or split up the transaction so as to avoid getting the tax clearance certificate either with a view to avoid the delay in registration or on being misguided.

No doubt, courts have held that apparent consideration in the document alone is relevant for requirement of certificate under section 230A. But under-statement of consideration is beset with serious consequences, if the Income-tax Department is able to establish the same. There may well be prosecution, where there is evidence to prove under-statement. Where the transaction is artificially split up, the assessee would be entitled to registration without certificate, but that would create an unnecessary suspicion in the mind of the officer, who may invoke the power of survey or the more drastic power of search to find the truth about the consideration, because it is felt that the taxpayers resort to such splitting up only to avoid enquiry in cases of understatement.

There can be no justification whatsoever to avoid proceedings under section 230A, where the transferor has no arrears of tax. Even where there are arrears, it is an opportunity to arrive at a satisfactory solution for payment of outstanding arrears by instalments. If a stay had been obtained for any undisputed payment, such tax cannot be treated as tax in arrears even for purposes of section 230A. Where satisfactory arrangement for payment of such arrears is made, it will be enough to enable the Assessing Officer to issue the required certificate under section 230A.

Where the client is a purchaser, he is best advised to insist upon the tax clearance certificate, since that alone would be satisfactory evidence to show that there is no attachment of the property or that it is not subject to any prior charge by way of tax dues. Since income-tax and other direct taxes are entitled to priority, and are also a charge on the property, a certificate under section 230A is an insurance against prior claim and any attempt to avoid the same with a view to register the transaction there and then may land the assessee in great trouble later and subject him to the risk of losing the property itself. Where registration is considered urgent, it can be presented to the registering officer subject to production of certificate under section 230A, where such a course may be warranted in cases where there is no apprehension of any tax liability.

15.3 Chapter XX-C

For transactions in respect of immovable property above the specified limits (Rs. 10 lakhs to Rs. 75 lakhs), where such property is located within areas notified for the purposes of Chapter XX-C, it becomes necessary that an agreement for sale, exchange or lease for a period exceeding 12 years should be in writing and registered with the appropriate authority within 15 days thereof. In Ashok Leyland Finance Ltd. v. Appropriate Authority [1998] 230 ITR 398 (Mad), even a development agreement was treated as an agreement for exchange, and therefore, a sale requiring a no-objection certificate. As for purposes of section 230A, it is not uncommon for the parties to by-pass the requirement by splitting up the transaction as between different persons or as on different dates. The courts have interpreted such course to be beyond the reach of the appropriate authority under Chapter XX-C of the Act. What is not realised is that such splitting up should be bona fide. The Department can establish that the transaction is split up artificially solely with a view to avoid the application of Chapter XX-C. If it does, it is doubtful whether the existing precedents would come to the assistance of the taxpayers.

There are also other practical considerations to be taken into account. In most cases, the very fact that there is an attempt to get around this requirement of law would justify the inference that there is possible under-statement of consideration and this is a serious matter from tax point of view. The Assessing Officer would be justified in making further investigation of the matter from both the parties and subject them to some avoidable harassment, even where the transaction is otherwise genuine and the consideration properly stated. On the other hand, the approval of the appropriate authority having been granted after normal enquiry means that there is no under-statement on the basis of material before the appropriate authority. The very act of approval would offer protection from any enquiry at a later stage, unless, of course, there is some positive evidence in favour of the inference of payment of on-money turning up after the approval.

15.4 Recovery proceedings

The auditor is often asked to deal with problems relating to payment of both disputed and undisputed tax.

There should ordinarily be no occasion for dealing with any problem relating to payment of undisputed tax. Only where advance tax is not paid in time and the assessee does not take care to see that the necessary funds for payment of self-assessment tax are mobilised in time, the problem arises. The authorities have no power to grant any accommodation in respect of undisputed tax. The law provides for stiff interest at 2 per cent. p.m. -- now reduced to 1.5 per cent. from 1.6.1999 -- for non-payment of advance tax. Where return is delayed for insufficiency or self-assessment tax, there is another liability of 2 per cent. p.m. -- similarly reduced to 1.5% -- for delayed return. Postponement of instalment of advance tax attracts 1.5 cent. p.m. as interest on such instalments. In rare cases where self-assessment tax could not be paid in full, the assessee is better advised to file the return and make the payment as soon after the date of filing the return as is possible, so as to avoid interest under section 234A and the possibility of ex-parte assessment, though such interest cannot be avoided once the demand is raised. Postponement or non-payment of undisputed tax would forfeit the right of appeal, if any part of the undisputed tax is outstanding as on that date.

As for disputed tax, a stay has to be asked for any possible demand. Care must be taken to marshal the facts to justify the stay. Specimen application is given in the annexure. Stay is not a matter of routine. As soon as stay is refused by one authority, the other remedies before the next higher authority has to be pursued with information of the same to the Assessing Officer so that, at no point of time, it could be said that the taxpayer has not been vigilant about the payment of tax.

15.5 Recovery of tax by Tax Recovery Officer

Attachment of bank balance and immovable property is not uncommon. The assessee is bound to run to the auditor and seek to prevent the same. Default may not be a wilful act on the part of assessee, who may not be able to pay the tax on the due date due to either sickness of the business or a cash crunch. It is necessary that his property is protected. It is not unlikely for the tax recovery officer to attach properties belonging to the family members as belonging to the taxpayer. In all such cases, the auditor has to familiarise himself with the Second Schedule to the Income-tax Act and take timely action. He should file objection where it is necessary so that the matter can be investigated under rule 11 of the Second Schedule. If the objection is overruled, action to file a civil suit under rule 11(6) of the Schedule may have to be initiated in time, and advice to that effect is necessary.

Remedy under rule 86 against an order may also be available from the Chief Commissioner or the Commissioner (Appeals) in certain cases. Rule 87 provides for review even after the appellate order is issued by the Commissioner (Appeals).

In most cases, it may be possible to arrive at a settlement, even after attachment, of the outstanding tax matters by getting a stay of the sale of the attached property and getting suitable instalments. Waiver of interest for delayed payment is possible under section 220 in rare cases from the Commissioner and other interest, under sections 273A, 273B or 273C under section 119 from the Chief Commissioner of Income-tax. Steps may be taken at that stage to scale down the demand.

It is necessary that the rights of the assessee are protected to the extent possible by avoiding auction through negotiated private sale, since a public auction may mean that the assessee does not get a proper price which he can otherwise get by private negotiation. Often taxpayers are able to solve their problems, if granted time.

While it is advisable to avoid issue of certificate to the Tax Recovery Officer by ensuring prompt payment of tax demand, the problem can be solved even after such certificate and attachment of properties, if the taxpayer is willing to honour the demands. If the taxpayer were to ignore his tax affairs out of either indifference, despondency or otherwise, his difficulties may get complicated beyond redemption. An auditor can play a very useful role in providing effective communication between the taxpayer and the tax collector.

15.6 Defence in potential prosecution cases

It often happens, where additions are made on strong grounds, there is a potential case for prosecution. Timely action to counter the same is necessary. Frivolous defence against patent additions based either on law or facts may not only not avoid the tax but also land the assessee in penalty and even prosecution.

Where a notice of prosecution is received, extreme care should be taken to draft a reply giving all the facts to indicate the bona fides of the assessee, the debatable nature of the issues involved or such other defence as may be available. An opportunity should be sought from the Commissioner to explain the position, since he is the sanctioning authority.

The defence in prosecution cases has to take into account the expertise of a criminal lawyer with the active assistance of the auditor on facts.

Before it is too late, at any rate before an appeal is decided by first appellate authority, an application before the Settlement Commission may avoid prosecution, since it has the power to grant immunity from prosecution, where prosecution has not already been initiated, the issues are complex and additional amount offered for settlement is above Rs. 1 lakh.

Compounding is the last resort, where the charge of delinquency is a matter, which cannot be lightly resisted. Timely action can avoid the trial itself, though compounding is possible even after conviction.

CHAPTER 16 Responsibility of a Chartered Accountant

16.1 A special role for chartered accountant

A Chartered Accountant has been assigned a special role under the Income-tax Act, 1961. He is entitled to give Tax Audit Report under section 44AB. His certificate is required for most reliefs such as sections 80HHC, 80-IA and for many other reliefs. Appendix 11 gives the list of audit reports prescribed till date. There are also procedural requirements for Chartered Accountant's certificate for various other purposes relating to import control, licensing, etc. Though some of the restrictions have been relaxed, the increasing dependence on Chartered Accountant places a high degree of responsibility on him. In fact in press release dated December 10, 1999 (See [2000] 241 ITR (St.) 4), it had been reported that the Minister of Finance has informed in Lok Sabha that the Central Board of Direct Taxes have issued instructions with immediate effect to the field officers to report instances of professional negligence on the part of Chartered Accountants in preparation of tax audit report, so that disciplinary action under section 288 of the Income-tax Act, 1961, could be initiated. Section 288 empowers enquiry against professional misconduct and on guilt being proved after opportunity to disqualify such person to act as authorised representative under the Income-tax Act. It has also been indicated in the Press Release that the Institute of Chartered Accountants of India is entitled to take action against members who furnish faulty reports.

One more report has been proposed in Finance Bill, 2000, by way of section 115JB(4) which requires a report in the prescribed form from a chartered accountant "certifying that the book profit has been computed in accordance with the provisions of this section".

16.2 Report under section 44AB

In an audit report under section 44AB, the responsibility of the auditor is significant. Certificate in Forms Nos. 3CA and 3CB requires the auditor to certify that the accounts of the assessee give "a true and fair view" of the assessee's affairs and that the profit and loss account and balance sheet conform to the same. Form No. 3CD requires a certificate to the effect that the information contained in it is also "true and correct" so that the full responsibility of the correctness of the information in Form No. 3CD and the credibility of the accounts are both certified. Form No. 3CD as applicable for the assessment year 1999-2000 is exhaustive and places a much larger degree of responsibility than was so far necessary. Where the auditor gives a certificate, which is incorrect, he may well be hauled up as an abettor in a prosecution case, apart from the possible disqualification from tax practice under sub-section (5) of section 288 and disciplinary proceedings which may be initiated by his own discipline. It is, therefore, necessary that the working papers should reveal the books and documents produced before him forming the basis of report and items chosen for test-check, where test-check is done, while the basis of choice of the items for test-check are indicated. The responsibility on the Chartered Accountant under section 44AB is onerous and the only way it can be discharged safely on a sound ethical basis is to bring out all the relevant facts on record and not to resort to subterfuge of suppressio veri suggestio falsi. As long as all the facts are presented and the verification that it is true and correct is made, subject to the omissions or defects noted in the report, it should be considered a fair report and should not warrant any adverse view. Guidance Notes issued by the Instituted of Chartered Accountants of India should be if great assistance in discharge of duties expected of the auditor.

16.3 Certification of reliefs

Certificates under section 80HHC or 80-IA or any other relief involve exercise of a high degree of responsibility as the computation of the relief itself is certified by the Chartered Accountant. It is not merely a report as under section 44AB. Since the law is complex and is susceptible to more than one interpretation, there can be bona fide differences of opinion between the taxpayer and the Chartered Accountant's own understanding of the law. Even where there are instructions or guidelines from the tax authorities or from the Institute, a different interpretation on legal advice may be possible. In all such cases where two opinions are possible, the best course is to indicate all the relevant facts and his own understanding of the provisions of law, while computing relief according to the understanding of the Chartered Accountant himself. Disclosure of all information so as to enable the Assessing Officer to recompute the relief on his own possible interpretations would make the Chartered Accountant sufficiently immune from adverse criticism and much less any other consequence.

CHAPTER 17 Conclusion

John Marshall a U.S. Judge in M'Cullioch v. Maryland, 17 U.S. (4 Wheat) 316, 431 [1819] observed "... the power to tax involves the power to destory..."

Mistakes in tax cases could be costly. Any act of omission or commission from the stage in which the retrun is filed till liability is finally decided by the Tribunal, which is a final court of facts, can be very expensive and may not be capable of being undone. Even law, ultimately to be decided by the Supreme Court may not help, if the facts are not properly presented. Hence, the professional has a responsible role to play lest the power to tax really ends up in power to destroy.

Oliver Wendell Holmes, another U.S. Judge, however commented on the aphorism in Panhandle Oil Co. v. Knox [1928] 277 US 233 in following words: "The power to tax is not the power to destroy while this Court sits". But the fact is that courts cannot act in isolatioin. It is the expert, whether it be an auditor, lawyer or a tax practitioner, who can help the court to aid the taxpayer to vindicate his legitimate rights under the tax laws.

appendix

1 - 6 Case Study
Returns

Rectification

Appeal

Appeal-III

Stay Applications

Appeal to Tribunal
Home

Case study - 1 Returns

Assessment year: 1998-99

I. A bad example of statement of Adjustment of Income for Tax purposes

(1) ABC Co. Ltd. files the following statement of income for the assessment year 1998-99 adjusted for tax purposes along with return on November 25, 1998.

	(Rs.)	(Rs.)
Income as per profit and loss account		7,50,000
Add : Depreciation treated separately		4,00,000
Disallowables :		
Donations		20,000
		11,70,000
Less : Depreciation as per income-tax law		6,00,000
Gross total income		5,70,000
Less : Donation under section 80G at 50 per cent.	10,000	
Deduction under section 80HHC	40,000	50,000
Total income		5,20,000

(2) Section 44AB report annexed to the return mentions the following items--

(a) In column 4(ii) of Form-3CD personal expenditure debited to profit and loss account.

(i) Car expenses relating to personal use of directors estimated at Rs. 12,000.

(ii) Club subscription Rs. 3,000

(b) In column (vi)(b) payment of Rs. 40,000 for purchases made on February 15, 1993, claimed to be covered under Rule 6DD. Full details are not available. If exception is not established, disallowance at 20 per cent. of the same, Rs. 8,000 to be disallowed.

(3) The profit and loss account of the company shows the following debits:

Provision for bonus: Rs. 60,000

(4) Balance sheet shows Rs. 75,000 as sales-tax payable.
II. An assessment order, where statements are inadequate
The Assessing Officer after issue of notice under section 143(2) without putting the proposed additions to the assessee passed the following order on March 30, 1999.

	(Rs.)	(Rs.)
Income as per return		5,20,000
Add :		
Addition under section 40A(3) as per audit report		8,000
Amount standing to the credit of sales-tax account, sales tax, being on receipts, remaining unpaid and hence disallowed under section 43B		75,000
Provision for bonus under section 43B		60,000
Personal expenses debited to profit and loss account		
Car expenses	12,000	
Club subscription	3,000	15,000
Deductions wrongly claimed		
Donations claimed under section 80G in - Receipt not enclosed	10,000	
Deduction under section 80HHC - Sale proceeds in foreign currency not received within the year	40,000	50,000
		7,28,000

The Assessing Officer has raised a demand for tax on these additions along with interest under section 234B.
III. Comments on inadequacies of the Statement and a suggested draft statement
In this case the assessment order has resulted in additions not only because of the faults of the Assessing Officer but also because of lack of clarifications in the statements. It might have been possible to avoid the mistakes and even resist successfully these additions more easily by way of rectification, appeal or revision, but the order itself could have been rendered impossible, if notes on following lines had been appended to the income statements.
Notes:
(1) Claim under section 80G in respect of donations made to Ananda Ashram, vide receipt No. 437, dated March 15, 1993. The institution has been approved under section 80G of the Income-tax Act, 1961 by the Commissioner of Income-tax, vide No. . . . dated . . . . . . (copy enclosed - Annexure 1)
(2) Claim covered by section 80HHC is in accordance with audit report in Form No. 10CCAC certified by a Chartered Accountant as required under section 80-HHC(4). The report is enclosed. (Annexure - 2)
(3) Provision for bonus relates to the bonus for the accounting year but paid on September 1, 1998, vide certificate of the Chartered Accountant for payment enclosed herewith. (Annexure - 3)
(4) The assessee maintains separate sales-tax account. No part of the sales-tax has been claimed as a deduction during the year. The assessee is advised, where separate account is maintained and such amount is not claimed in profit and loss account, section 43B can have no application. Amount, incidentally, relates to March sales paid during April next year. Similar amount in opening balance is Rs. 78,000.
(5) Use of the company car by the Executive Director, Shri Shriram, for personal purposes is a perquisite to the director forming part of his emoluments. Club subscription is

reimbursement to him to enable him to entertain company's customers for business promotion. Payment by way of club services and facilities were also for entertainment of customers only. The reimbursement, incidentally, accords with the terms of the contract of his employment.

(6) Payment for purchases of Rs. 40,000 has been made in cash for purchase of cotton and agricultural produce from Shri Ramsingh Yadav of Silapur, a grower as certified by him. Copy enclosed.(Annexure - 4). It is, therefore, covered by Rule 6DD(f)(i).

Notes to the above effect could have possibly avoided the disallowances. The assessee would have now the additional burden of proving that the explanations were not withheld during assessment in spite of opportunity in order that they may be considered on merits.

Case Study - 2 Rectification

I. A bad example of a Rectification Petition

The following is the petition for rectification presented by a taxpayer in respect of the assessment order in Case Study - 1, where the notes as suggested had not been appended.

From
ABC Co. Ltd.
Chennai.
To
The Income-tax officer,
X Ward,
Chennai.
Sir,
Sub: Request for rectification of the order for assessment year 1998-99
Please refer to your assessment order dated 30th March, 1999. You have made the following additions:
(1) Amount standing to the credit of sales-tax account.
(2) Provision for bonus under section 43B
(3) Personal expenses debited to Profit & Loss Account
(4) Donations
(5) Deduction under section 40A(3)
Since these are not warranted because of the proofs herewith sent, kindly rectify the omissions. We will be grateful if you can pass a rectification order accepting our return of income and cancel the demand. If granted an opportunity, we would place any further proof, you may require.
Yours faithfully,
for ABC Co. Ltd.
Dt. 15-4-1999.

II. Inadequacies in the Rectification Petition

There is no explanation for any of the items disallowed in the order. Mere offer of proof can hardly be a matter of mistake apparent from record. In fact, this would tantamount to admission that on the basis of the records at the time of the order, the amount could not have been allowed. Another opportunity is lost to bring on record the relevant facts and arguments for deductions.

There should have been a request for personal hearing. Though there is an offer of further evidence, absence of a request for personal hearing may justify the Assessing Officer in rejecting it merely with reference to the contentions in the petition without further opportunity to explain the matter.

There is no request for stay of demand pending disposal of the petition under section 154 with the result, the Assessing Officer may meanwhile enforce the demand without disposing of the rectification petition.

Case Study - 3 Appeal

I. An example of an ill-drafted appeal

The following is an appeal filed by a taxpayer in respect of the assessment order in Case Study 1.

Facts

The learned Assessing Officer has passed the order for assessment year 1998-99 disallowing following items:

(a) Amount standing to the credit of sales-tax account
(b) Provision for bonus under section 43B
(c) Personal expenses debited to P & L A/c.
(d) Donations
(e) Deduction under section 40A(3).
(f) Deduction under section 80HHC and 80G.

Your appellant objects to these additions on the following grounds:

Grounds of appeal

The learned Assessing Officer erred in making the following additions:

(a) Amount standing to the credit of sales-tax account
(b) Provision for bonus under section 43B
(c) Personal expenses debited to P & L A/c.
(d) Donations
(e) Deduction under section 40A(3).
(f) Deduction under section 80HHC and 80G.

2. The returned income of Rs. 5,20,000 may be directed to be accepted in the facts and circumstances of the case.

3. For these and any other ground that may be raised during the hearing, the appeal may be allowed and justice rendered.

Appellant.

II. Comments

1. The statement of facts which merely lists the disallowances does not serve the purpose of such statement. Even the amounts disallowed have not been indicated. The facts relating to each disallowance are expected to be stated in the statement briefly. This has not been done. Failure to do so puts a burden to present them at the time of hearing. In case, the order is ex parte for whatever reason, or the first appellate authority omits to take into account all the grounds verbally urged before him by oversight or otherwise, it is possible that the assessee may lose the appeal, notwithstanding the facts being in his favour. The facts, which have been suggested in the notes in Case Study - 1 in respect of each of the claim is required to be stated in the Statement of Facts.

2. Grounds of appeal as worded in this case study are also totally inadequate.

(i) The main objection to the assessment order is that it had been passed without giving opportunity to prove the proposed disallowances by failing to observe the principles of natural justice. This should have been the first ground.

(ii) Separate grounds have to be taken for each disallowance.

(iii) It is not enough, if it is merely stated that the Assessing Officer erred in making the disallowances. The disallowances should be resisted by stating the reasons for the claim. The repetition of brief facts in two or three lines may form separate grounds with the result that the first appellate authority may be able to convince himself about the eligibility of the claim even by reading the grounds of appeal.

(iv) As far as possible, Statement of Facts and Grounds of Appeal should be self-sufficient so that even in an ex parte order, it should be possible for the assessee to get the reliefs claimed. Annexures giving proof of the expenses by way of copies may also be sent along with the Memorandum of Appeal. Where such annexures are numerous, it may be presented in the form of paper book.

III. Suggested Draft against order rejecting rectification

The following is the suggested draft statement of facts and grounds against the order under section 154, where it is rejected on the routine ground that the mistakes are not apparent from the records.

Statement of facts

Your appellant, a public limited company, filed a return on January 2, 1994, declaring a total income of Rs. 5,20,000. The Assessing Officer has made additions and disallowances computing total income to be Rs. 7,60,000 in his order dated March 30, 1999. A rectification petition filed on April 15, 1999, has been rejected by his order dated April 18, 1999, on the ground that fresh evidence filed cannot be entertained in an order under section 154. The additions and disallowances are not warranted. Since these additions have been made in disregard of facts, which are apparent from record, the additions are required to be deleted.

The facts relating to each of the items are as under:

1. Addition is made purportedly under section 40A(3) for cash purchase of Rs. 40,000 from Shri Ramsingh Yadav of Silapura a grower, the purchase being of cotton an agricultural produce. It is covered by exception in rule 6DD(f). The mere fact that Tax Audit Report advised a certificate from seller as a matter of abundant caution cannot be a ground for addition. Certificate as suggested in the audit report had since been obtained and was enclosed with the rectification petition.

2. Sales-tax account is separately maintained and there is no claim made in respect of sales tax. In fact, amount of outstanding sales tax at the end of the preceding year is Rs. 78,000 as against Rs. 75,000 at the end of this year. Incidentally, the amount relates to March sales and the entire amount has been paid on 10th April itself (proof of payment was enclosed along with rectification petition). Even otherwise, since the opening balance of Rs. 78,000 (an information on record) is more than Rs. 75,000 no addition is warranted.

3. Bonus relating to profits of the year to the extent of Rs. 60,000 was paid on September 1, 1998. It was for this reason that it was not disallowed in the Statement of Income. Certificate from the Chartered Accountant had also since been filed along with the rectification petition.

4. Car expenses and club subscriptions are emoluments of executive director Shri Shriram and are therefore allowable as deductions. Besides, club subscription is reimbursed to Shri Shriram to enable him to promote company's business and is paid in pursuance of agreement with him.

5. Deduction under section 80G at Rs. 10,000 has been claimed in respect of donation to Ananda Ashram made on March 15, 1993, acknowledged by them, vide receipt No. 437. Receipt mentions approval under section 80G by Director of Exemption, vide No. . . . . . . Date . . . . . .

The claim under section 80HHC is supported by an auditor's certificate. The inference in the intimation that sale proceeds have not been received within the specified time is not correct.

Your appellant is advised that none of the above additions or disallowances are warranted either in law or on facts and there is no justification for the addition whatsoever. Proof is not required to be furnished along with returns except for bonus payment. This was furnished. Since sales tax was not claimed, proof was not enclosed, but even for this, proof was furnished along with rectification petition and this should have been entertained in view of Board's Circular No. 669, dated October 25, 1993 (see [1993] 204 ITR (St.) 105).

The appellant is, therefore, aggrieved against the order refusing to rectify the intimation on the following grounds:

Grounds of Appeal

1. The order of learned Assessing Officer is erroneous in refusing to allow the rectification petition by his order dated April 18, 1999.

2. The learned Assessing Officer's order under section 154 is violative of the principles of natural justice as he had not given a personal hearing to the appellant before dismissing the petition, though specifically requested in person, while filing the petition.

3. The learned Assessing Officer erred in dismissing the petition, without dealing with any of the items on merits in a summary manner. Even for this reason the order is bad in law.

4. The learned Assessing Officer erred in making additions and disallowances in his order dated March 30, 1999, none of which are justified in law or on facts.

5. The learned Assessing Officer was not justified in shutting out evidence voluntarily submitted even where not strictly required along with return especially in view of Board's Circular No. 669, dated October 25, 1993 (see [1993] 204 ITR (St.) 105), relaxing the requirement even in the matter of statutory enclosures and advising their admission on the petition under section 154.

6. The learned Assessing Officer ought to have seen that all the claims are justified on merits and should have, therefore, been allowed in the order under section 154 cancelling the demand for tax and interest under section 234B.

(i) Rs. 40,000 being payment for purchase of agricultural produce from a grower covered by exception under rule 6DD(f).

(ii) Sales tax outstanding at Rs. 75,000 has not been claimed as a deduction. It is sales tax pertaining to March sales paid in April and proof of payment had also since been enclosed with rectification petition and this should have been admitted vide Circular No. 669, dated October 25, 1993. It is not even otherwise hit by section 43B. The opening balance itself was Rs. 78,000.

(iii) Bonus provision relates to the year and has been paid on September 1, 1998, well before the due date for filing return. Proof was furnished along with the rectification petition and it should have been admitted and addition deleted even in view of Circular No. 669, dated October 25, 1993.

(iv) Car expenses and club subscriptions are to be treated as perquisites to the executive director allowable as a deduction. These were for entertaining customers of the company. For either reason, it is deductible. These payments have always been allowed in the past.

(v) Deduction under section 80G for Rs. 10,000 is on account of donation of Rs. 20,000 to an approved charitable institution. Proof, though not required along with return, was furnished along with the rectification petition.

(vi) Deduction of Rs. 40,000 is supported by a certificate as required under section 80HHC(4). The information as to receipt of sale consideration in India within the stipulated period is available in such certificate itself.

7. The learned Assessing Officer erred in failing to correct the mistakes in computing the income in the order of assessment at Rs. 7,28,000 as against Rs. 5,20,000 returned by the

assessee and raising additional demand by way of tax, and interest under section 234B on the facts and in the circumstances of the case.

8. For these and other grounds which may be urged at the time of hearing, the appeal may be allowed and justice rendered.

Appellant

IV. A regular appeal

A regular appeal against the assessment also could be on the above lines.

Case Study - 4 Appeal-III

Facts

The Assessing Officer makes an addition of two cash credits of Rs.20,000 in the name of A and B each in an order under section 143(3) for the assessment year 1998-99 for lack of confirmation letters, which were expected to be produced on the next day of the hearing. The appellant was present on the next day and conceded that he could not get confirmation letters from A, because he was out of town and that B refused to give such a confirmation letter in view of strained relations with him recently. Full addresses and other particulars relating to both A and B were furnished. However, the Assessing Officer had made the additions holding that the cash credits were unproved in that no confirmation letters were filed.

I. A bad example of an appeal

On the above facts, the assessee had filed the following grounds of appeal:

Statement of facts

Your appellant is an individual and had borrowed Rs. 20,000 each from A and B. The assessee had furnished full addresses of the creditors and thereby discharged the onus placed on him. The Assessing Officer, for reasons best known to him, had disallowed the same merely because confirmation letters were not filed. Your appellant is advised that it is not incumbent upon the assessee to file confirmation letters when he has furnished the addresses. The addition may, therefore, be deleted.

Grounds of appeal

The order of the Assessing Officer is highly arbitrary and is totally unwarranted. Hence, it may be set aside.

2. The Assessing Officer went beyond his jurisdiction in making the additions as he should have called for the creditors and verified the transactions instead of asking for confirmation letters especially when the assessee had furnished full addresses.

3. The cash credits may be deleted on the facts and in the circumstances of the case.

4. The appellant reserves the right to raise fresh grounds during the hearing of the appeal.

Appellant

II. Comments

The entire tenor of the statement of facts and grounds of appeal are extremely provocative and shows gross misunderstanding of the legal position as to burden of proof. Vital facts which are in the assessee's favour have not even been adverted to. The following are the defects in the appeal filed by the assessee:

The assessee should have stressed the fact that the principles of natural justice were not observed by the Assessing Officer while granting only a day's time to prove the cash credits. It is a matter of jurisdiction and, hence, should have been raised even as a preliminary ground.

Reference to the burden of proof on the Assessing Officer is incorrect as the facts relating to cash credits are in the exclusive possession and knowledge and knowledge of the taxpayer. Apart from the same, section 68 of the Income-tax Act places responsibility for giving explanation for cash credits squarely on the taxpayer.

The innuendo in the words "for reasons best known to him" suggests mala fides on the part of the Assessing Officer. No purpose is served by such an allegation. This may alienate the sympathy of the appellate authority, when such allegations are made against one of his junior colleagues. Apart from the same, the taxpayer has no justification for such a suggestion.
The assumption that giving addresses itself is a complete explanation for the cash credits is controversial. There has been no reference to the fact that the assessee did not have sufficient time to get confirmation letters. The fact that he was not able to get a confirmation letter from one of the creditors because of strained relationship should have also been brought on record. His offer to prove the credits during the hearing on the second day should be brought on record since the assessment without any inquiry becomes bad in law.
The brief facts as to the cash credits apart from addresses wherever possible should have also been given so that the case for assessee may rest on some positive material rather than a mere failure of the Assessing Officer to grant time or lack of proper inquiry.
III. A better presentation
The suggested statement of facts and grounds of appeal are as below:
Statement of facts
Your appellant is an individual and the assessment relates to assessment year 1998-99. He has borrowed two amounts of Rs. 20,000 each from A and B in the relevant accounting year, brief facts relating to which are as under:
A is a dealer in textiles, assessed to income-tax being taxed at ITO, Ward . . . . . Chennai (Permanent Account No. not known). The amount was received by account payee cheque No. . . . . . dated April 15, 1992, on Media Bank, George Town Branch and returned by account payee cheque No. . . . . ., dated March 20, 1993, on Canara Bank, Tondiarpet, Madras.
B is an employee working in the Co-operative Department of the State Government. He is a distant relation of appellant through his wife. The money was urgently required for payment of sales tax. The loan was received by account payee cheque drawn on the State Bank of India, Esplanade Branch, Madras, vide cheque No. . . . . dated . . . . . . and is outstanding till date. The appel

Case Study - 5 Stay Applications

The assessee in the facts of the Case Study-4 is advised that the demand raised is likely to be enforced against him especially because of the drive for collection in the last quarter of the year. The assessee has, therefore, given the following request to the Assessing Officer to stay the demand.
I. A bad example

From
. . . .
. . . .
To
The Assessing Officer,
Ward . . . .
Sir,
Sub. : Stay of disputed demand of Rs. . . . .
Assessment year : 1998-99
A demand of Rs.18,600 was raised by adding cash credits of Rs.40,000. This addition is appealed against.
Kindly stay the demand till the first appeal is decided.

Yours faithfully,
(. . . . .)

II. Comments

This petition for stay assumes that the stay of demand is a matter of right in every case of appeal. Section 220(6) authorises the Assessing Officer to allow stay of demand in a pending appeal "in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case". Hence, a case has to be made out for exercise of such discretion.

III. Suggested draft

Mere filing of appeal may not by itself warrant stay in every case. The petition has to be little more detailed to enable exercise of discretion. The following draft is suggested :

From
. . . .
. . . .
To
. . . .
. . . .
Sir,
Sub. : Stay of disputed demand of Rs. 14,000
Assessment year : 1998-99
****

I have been served with a notice of demand to pay Rs. 14,000 in all for the assessment year 1998-99 on January 2, 1999, asking for payment by January 15, 1999. You are aware that I have paid self-assessment tax on the basis of return. The present demand has arisen in view of the addition of Rs. 40,000 on account of cash credits. The additions came to be made because I was not in a position to produce confirmation letters on short adjournment of only one day for the purpose. The credits are from income-tax assessees whose full addresses have been given and the amounts had been received by account payee cheques.

I had also offered to produce any further evidence. But you did not find your way to accept the request, with the result that had been left with no option except to file an appeal, a copy of which is enclosed for your information.

The payment of tax, if insisted upon, will place heavy burden on my resources, because of the recent recession in textile trade. The title deeds of your petitioner's house property at No.25, G.A. Road is already with you in connection with stay of demand of Rs. 40,000 relating to disputed capital gains tax for assessment year 1996-97, while the value of the property is Rs. 2 lakhs. Hence, there is adequate security lying with you. Kindly, therefore, grant stay of demand till disposal of first appeal and oblige.

The additions have been made in spite of the following facts. In the case of A, the loan had been both, received and returned by account payee cheques, besides the interest paid thereon being allowed as claimed. In the case of B, a government servant assessed in salary circle-I, the loan was received by account payee cheque against a pending promissory note. He has refused to give a letter and said that he could, if required by the Income-tax Department, reply directly.

Yours faithfully,
(. . . . .)

Case Study - 6 Appeal to Tribunal

Facts

In respect of facts in Case Study - 4 on further development by way of an order partially adverse in first appeal, an appeal Tribunal is considered necessary.
Commissioner (Appeals) declined to give an adjournment of hearing, requested on the ground that the auditor was out of station on the date of hearing. However, in the ex parte order, the Commissioner of Income-tax (Appeals) had deleted the cash credit of A, while comfirming the credit in the name of B on the ground that the assessee himself admitted that he cannot get confirmation letter and that no proof of the credit had been filed either with the Assessing Officer or with him. An appeal to the Income-tax Appellate Tribunal is suggested. The following is the suggested draft grounds of appeal to the Tribunal. There is no need for statement of facts in second appeal.

Draft gounds of appeal before the Income-tax Appellate Tribunal
The order of the learned Commissioner (Appeals) to the extent that he has confirmed the addition of Rs. 20,000 is contrary to law and facts of the case.
2. The learned Commissioner (Appeals) was not justified in passing an order ex parte order rejecting the petition for adjournment filed a day earlier to the date of hearing without notice to the assessee prior to the hearing especially, since the time available for compliance was only four days from the date of receipt of notice. He did not also indicate his refusal to appellant's representative, when he personally presented the petition for adjournment. The learned Commissioner (Appeals) ought to have also found that in view of the prior commitment of the auditor before the Commissioner of Income-tax (Appeals), Madurai, as pointed out to him in the letter, adjourment ought to have been granted. The order of the Commissioner (Appeals) is, therefore, violative of the principles of natural justice.
3. The learned Commissioner (Appeals) ought to have found that the Assessing Officer had not observed the principles of natural justice in not granting sufficient time for producing proof ignoring the facts on record.
4. The learned Commissioner (Appeals) ought to have found that the addition of borrowing from B to the extent of Rs. 20,000 could not be sustained by him. The impugned advance is from a State Government employee and the amount was received by account payee cheque. The full address was given and it was pointed out that to the best of information and belief of the appellant, B was an assessee in Salary Circle-1. The circumstances in which the confirmation letter could not be produced were also mentioned before the Assessing Officer, apart from the fact that a request was made to summon B in case of any doubt as to the credit. The Assessing Officer ignored the facts and the request and made the addition without sufficient opportunity and this addition has been erroneously sustained by the Commissioner (Appeals).
5. The learned Commissioner (Appeal) had not found any mistake in allowing the interest paid, which has been allowed by the Assessing Officer himself and this plea was specifically brought to the notice of the Commissioner (Appeals) in the grounds of appeal. If the payment of interest is a legitimate deduction, the cash credit could not have been held as not genuine. Even for this reason, the addition is bad in law.
6. For these and other reasons which may be urged at the time of hearing, the appeal may be allowed and justice rendered.
Appellant.

Deduction under Chapter VI-A for individuals

Deductions under Chapter VI-A are available from gross total income and the aggregate of such deductions cannot exceed gross total income. The following are mere list of deductions on the statute book as on 1-1-2000 and are available subject to the limits and conditions stated therein for respective years.

Sections	Nature of deduction
80CCA	Deposits under National Savings Scheme and notified deferred annuity plans. Available for individuals and HUF.
80D	Medical insurance premia (subject to maximum of Rs.10,000). Available for individual and HUF with limit enhanced to Rs. 15,000 where the beneficiary is a senior citizen.
80DD	Maintenance including medical treatment of handicapped dependents or by way of deposits in notified schemes for their benefit (Rs.40,000). Available for resident Individual and HUF.
80DDB	Expenses on Medical treatment. Available for residents in India and HUF up to the extent actually increased subject to ceiling of Rs.15,000.
80E	Repayment of study loan taken maximum Rs.25,000. Available for individuals.
Sections	Nature of deduction
80G	Donation to certain funds, charitable institutions up to 50 per cent. of qualifying donation, or fully if approved for 100%. Available for all.
80GG	Rent paid for furnished/unfurnished accommodation by those not in receipt or any allowance for the same. (maximum Rs.24,000).
80GGA	Certain donations for scientific research or rural development. Available for all.
*80HHB	Deduction at 50% of income from foreign projects. Available for all residents.
*80HHBA	Deduction at 50% of income from housing projects subject to conditions. Available for residents.
*80HHC	Deduction at 100% on export profits. Available for all residents.
*80HHD	Deductions up to 50% of income earned in convertible foreign exchange in tourism business. Available for all residents.
*80HHE	Deduction of 100% of income from export of software. Available for all residents.
*80HHF	Deduction of 100% of income from export of film software, etc. including telecasting rights. Available for all residents.
80-IA	Deduction at specified rate for new industrial undertakings in infrastrcture development. Available for all assessees. Earlier relief for other industrial undertakings in section 80-IA is now shifted to section 80-IB from the assessment year 2000-2001.
80-IB	Deduction at specified rate for new industrial undertakings. Available for all assessees. Prior to the assessment year 2000-2001 it was part of sec. 80-IA. Finance Bill, 2000, proposes extension of relief for the industrial undertakings to be established before 31st March, 2000, to 31st March, 2002.
80JJA	Deduction up to 100% subject to ceiling of Rs. 5 lakhs on income from business of collecting and processing bio-degradable waste. Available for all assessees.
80JJAA	Deduction of 30% of additional wages paid to new regular workmen in an undetaking. Available only for Indian companies.
80L	Interest on certain securities, and other income from approved investments (subject to maximum of Rs.12,000) -- Extra 3,000 available for interest on

	securities. Available for Individual and HUF.
Sections	Nature of deduction
*80-O	Royalties, etc. from certain foreign companies (up to 50 per cent. of net royalty). Available for all residents.
80P	Deductions for co-operative societies of different amounts with reference to nature of activities.
80QQA	Deduction of 25 per cent. of income of an author writing in a language in Eighth Schedule. Available only for resident individuals.
*80R	Remuneration from specified foreign sources in the case of professors/teachers, etc. (maximum 75 per cent. of foreign exchange brought into India). Available for Indian citizens only.
*80RR	Professional income from foreign sources (maximum 75 per cent. of foreign exchange brought into India). Available for resident individuals.
*80RRA	Remuneration received for services rendered outside India maximum 75 per cent. of foreign exchange brought into India). Available for Indian citizens only.
80U	Income of totally blind or physically handicapped persons to the extent of Rs.40,000. Available for resident individuals.

Note.--*Finance Bill, 2000, proposes phasing out these reliefs in five years starting from assessment year 2001-2002.

Tax oriented investments

(As on 1-1-2000)

Name of security	*Rate of interest and ceiling, if any	Tax relief under the Income-tax Act
(1)	(2)	(3)
Interest on Post Office Time Deposit	*Interest compounded quarterly @ 9 to 11.5 per cent. p.a. depending on period of deposits.	Interest deductible under section 80L
5-Year Post Office Recurring Deposit	*Interest compounded quarterly @ 11.5 % p.a. payable on maturity.	Interest deductible under section 80L
Postal Savings Account	*4.5 per cent. p.a. annual ceiling of Rs.50,000 for sole account, and for Rs. 1 lakh for joint account	Exempt under section 10(15)(i).
Post Office monthly income account (6 years)	*Interest at 12 per cent. p.a. payable monthly, and in addition a bonus at 10 per cent. payable on maturity. Ceiling Rs.2,04,000 for sole account and Rs. 4,08,000 for joint account.	Interest deductible under section 80L.
(1)	(2)	(3)
6-Year National Savings Certificate VIII Issue	Interest compounded half-yearly @ 11.5% p.a. payable on maturity.	Investment and interest credited eligible for tax rebate under section 88. Interest exempt up to

		Rs.12,000 under sec. 80L.
15-Year Public Provident Fund	Interest @ 12% p.a. (reduced to 11% from 1-4-2000) every year but locked up, with right only to partial withdrawal or loan before 15 years.	Interest totally exempt under section 10(11); investment qualifies for tax rebate under sec. 88.
10-year Social Security Certificate	Rs.1,000 becomes Rs.3,000 on maturity. Maximum Investment Rs.5,000. Payable on Maturity Rs.15,000. Age 18 to 45.	Nil
National Savings Scheme, 1992	Interest @ 11% Locked up for five years	Interest deductible under section 80L, while investment qualifies for tax rebate under section 80L.
Relief Bonds, 1999 (RBI)	Interest compounded half yearly @ 9% p.a.	Interest is exempt under section 10(15)(iic).
Deposit Scheme for Retiring Government Employees, 1989, and Deposit Scheme for Retiring Employees of Public Sector Companies, 1991	Simple interest at 9% per annum payable half-yearly. Lock-in-period 3 years. Ceiling-Retirement Benefits.	Interest totally exempt under section 10(15)

*Rate of interest subject to variation.

Note : 80L deduction, where eligible is limited to Rs.12,000. Extra amount of Rs.3,000 is available for interest from Government Securities. Tax rebate under section 88 is at one-fifth of the amount invested. While deduction is from gross total income, rebate is set off against tax payable. Tax relief is subject to change in law.

A specimen calendar of dates for income-tax compliance

(As on 1-1-2000)

Last due date	Obligation
14th January	Quarterly Report on Payments to non-residents
14th April	Quarterly Report on Payments to non-residents
30th April	Annual returns for TDS on Dividends, `Interest other than interest on securities'. Half-yearly return of tax collected at source under Sec. 206C.
31st May	Annual return of TDS on salaries, on winnings from lotteries, etc.
15th June	Due date for payment of first instalment of advance tax by companies only. Returns by those with income other than business or profession.
30th June	Annual return of TDS on interest on securities, on interest other than interest on securities, on payments to contractors and sub-contractors, rent and professional fees.
14th July	Quarterly Report on payments to non-residents.

Last due date	Obligation
31st August	Return for those (other than companies) with business or profession not liable for audit.
15th September	Payment of advance-tax -- first instalment.
14th October	Quarterly Report on payments to non-residents.
31st October	Half-yearly return of tax collected at source under section 206C. Due date for those other than companies with income from business and profession liable for audit.
30th November	Return of Income and Wealth and filing Tax Audit Report for Companies.
15th December	Payment of third instalment.
15th March	Payment of final instalment.
31st March	Any further payment of advance tax if found due.

1. The above calendar is not comprehensive and is also liable for change with amendments to law, rules or notifications. Similar calendar is advisable for other due dates apart from dates of statutory returns under other laws.
2. Tax deduction has to be made at the time of payment (including crediting in accounts) and deposited within specified number of days, statements filed and certificates issued to the payees within the prescribed time limit as indicated in chart under Chapter 11. Dates and forms of each item of TDS is not uniform under the Rules and are required to be monitored.

Time limit for appeals/ rectifications/ revisions

A speciman chart

Sl. No.	Purpose	Limitation/ Due date
(1)	(2)	(3)
1.	Appeal to the Commissioner of Income-tax (Appeals)	Within 30 days from the date of service of assessment or reassessment order
2.	Appeal to the Appellate Tribunal	Within 60 days from the date of service of first appellate order
3.	Cross-objection to the Appellate Tribunal	Within 30 days of the receipt of notice of the Tribunal appeal
4.	Application to the Tribunal for appeal to the High Court	Within 120 days of the date of service of order
5.	Appeal to Supreme Court under section 260A of the Act on a certificate of fitness granted by the High Court	Within 60 days of judgment of the High Court
(1)	(2)	(3)
6.	Statement in Form 37-I to be filed before the appropriate authority under section 269UC	Within 15 days from the date of Agreement for

		transfer of immovable property.
7.	Petition for rectification of mistakes	Four years from the end of the financial year, in which the impugned order was passed.
8.	Petition under section 264 to the Commissioner for revision	One year from the date on which the the impugned order was communicated to assessee or the date on which he came to know of the order, whichever is earlier.

Audit reports under Income-tax Act

Section	Form	Audit of whose account and purpose thereof
10(23C)	--	Charitable or religious institution, for exemption.
10-C(5)	--	Industrial undertaking in North-East Region.
12-A	10-B	Charitable and religious institutions.
33ABA(2)	3AD	Site restoration fund.
35D(4)	3B	Amortisation of certain preliminary expenses.
35E(6)	3B	Prospecting for specified minerals.
36(1)(xi)	3BA	Deduction on Y2K Compliance.
44AB	3CA to 3CD	Compulsory tax audit of accounts for business or profession.
50B	3CEA	Capital gains on slump sale.
80HH(5)	10C	Industrial undertakings or hotel business in backward areas.
Section	Form	Audit of whose account and purpose thereof
80HHA(4)	10CC	Small-scale industrial undertakings in rural areas.
80HHB(3)	10CCA	Projects outside India
80HHBA	10CCA	Housing project
80HHC(4)	10CCAC	Export business

80HHC(4 A)	10CCAC	Exports by supporting manufacturer
80HHD(6)	10CCAD	Earnings in convertible foreign exchange in tourism, etc.
80HHE(4)	10CCAF	Export of computer software, etc.
80HHF(4)	10CCAI	Export of entertainment software and rights.
80HHF(4 A)	10CCAF	Supporting software exporter.
80-I(7)	10CCB	Deduction in respect of profits and gains from industrial undertakings after a certain date (up to 31.3.1991)
80-IA(7A)	10CCC	Highway project
80-IA(8)	10CCB	Industrial undertakings after a certain date from 1.4.1991.
80-IB(13)	--	Deduction for infrastructure industries
80-JJAA	--	Employment of new workmen
142(2A)	6B	Special audit with the approval of the Chief Commissioner/Commissioner.

Note.--Section 115JB(4) proposed in the Finance Bill, 2000, prescribes a report to certify the taxable books profits.
List of penal provisions--Section 271(1) to 275
(as on 1-1-2000)

Section	Nature of default	Limits
271(1)	Delayed payment of tax due	Up to tax demanded or due.
271(1)(b)	Penalty for non-compliance with statutory notices under section 143(2)/142(1)/142(2A)	Rs. 1,000 to Rs. 25,000
271(1)(c)	Concealment of income	100% to 300% of tax evaded.
271A	Failure to keep, maintain or retain books of account, documents, etc.	Rs. 2,000 to 1 lakh.
271B	Failure to get accounts audited under section 44AB	% of turnover up to 1 lakh.
271C	Penalty for failure to deduct tax at source	up to tax failed to be deducted.
271D	Penalty for failure to accept deposits or loans in account payee cheques or drafts under section 269SS.	Equal to amount.

271E	Penalty for failure to return deposits in account payee cheques or drafts under section 269T	do.
Section	Nature of default	Limits
271F(1)	Penalty for failure to furnish return of taxable income	Rs. 1,000
271F(2)	Penalty for failure to file return covered by one by six rule	Rs. 500
272A(1)	Penalty for failure to answer questions, sign statements, furnish information, returns of statements, allow inspections, not responding to summons, not getting permanent account number	Rs. 500 to 10,000
272A(2)	Penalty for miscellaneous offences like failing to furnish particulars required, returns and certificates relating to TDS, etc.	Rs. 100/200 for each day during which the offence continues.
272AA	Penalty for failure to comply with the provisions relating to survey under section 133B	Up to Rs. 1,000
272BB	Penalty for failure to get TAN Number and comply with the provisions of section 203A	Up to Rs. 5,000
273A	Power to reduce or waive penalty, etc., in certain cases	
273B	Penalty not to be imposed where reasonable cause is proved	
274	Procedure for levy of penalty.	
275	Bar of limitation for imposing penalty.	

List of prosecution provisions sections 275A to 278

(as on 1-1-2000)

Section	Nature of offence	Punishment
275A	Contravention of prohibitory order during search made under sub-section (3) of section 132	Imprisonment up to 2 years.
276	Removal, concealment, transfer or delivery of property to thwart tax recovery.	do.
276A	Failure to comply with the provisions of sub-sections (1) and (3) of section 178 by liquidator of company.	do.
276AB	Failure to comply with the provisions of sections 269UC and 269L in relation to pre-emptive purchase of property under Chapter XX-C.	do.

276B, 276BB	Failure to pay tax deducted or collected to the credit of Central Government under Chapter XII-D or XVII-B	3 months to 7 years.
Section	Nature of offence	Punishment
276C	Wilful attempt to evade tax, interest or penalty, etc.	Where evasion exceeds Rs. 1 lakh--6 moths to 7 years. Where evasion does not exceed Rs. 1 lakh or otherwise--3 months to 3 years
276CC	Failure to furnish return of income in time.	do.
276CCC	Failure to furnish block return of income in search cases	3 months to 3 years.
276D	Failure to produce accounts and documents	Up to 1 year.
277	False statement in verification, etc.	If accepted as true--6 months to 7 years. If not accepted as true--3 months to 3 years.
278	Abetment of false return, etc.	do.
278A	For second and subsequent offences under sections 176B, 276C, 276CC, 277 and 278	6 months to 7 years.
280(1)	Disclosure of information by public servants in contravention	Up to 6 months.

Note : Fine is imposable at the discretion of the court for all offences except for the limits prescribed in respect of offence under section 176D at Rs. 4 to 10 for every day of default.

Chart of reinvestment benefits for long-term capital gains

(As an 1-1-2000)

Aspects of relief		Section 54	Section 54EA	Section 54EB	Section 54F
(1)		(2)	(3)	(4)	(5)
1.	Persons eligible	Individual and Hindu undivided family	All	All	Individual and Hindu undivided family
2.	Sale of which long-term asset is eligible for exemption	A residential house property	Any long-term capital asset	Any long-term capital asset	Any long-term capital asset (other than a residential house property)
3.	Asset available for the relief of reinvestment benefit	Residential house property	Bonds, shares, debentures, or units, as notified for the purpose	Bonds, shares, debentures or units as notified for the purpose.	A residential house property

4.	What is time limit for acquiring the new asset with reference to date of transfer	Purchase: 1 year before or 2 years after. Construction: to be completed within 3 years	6 months from date of transfer	6 months from date of transfer	Purchase 1 year before or 2 years after. Construction to be completed within 3 years.
5.	Amount to be invested for full exemption	Investment in the new asset or capital gains, whichever is lower	Net sale consideration	Capital gains	Net sale consideration.
6.	Minimum period of holding new asset	3 years	3 years (not also to be charged as security)	7 years (not also to be charged as security)	3 years. Purchase of another residential house within 2 years or construction of another residential house within 3 years of the transfer of original asset will lose exemption.
7.	Treatment on default of conditions	Amount earlier exempted will be short-term capital gains in year of default. Unutilised deposit in C.G. Deposit Accounts Scheme at end of 3 years of transfer will be chargeable as long-term capital gains in that year.	Amount earlier exempted will be long-term capital gain in the year of default.	Amounts earlier exempted will be long-term capital gain in the year of default.	Long-term capital gain in the year of breach. If deposit in capital gains deposit account scheme is unutilised till the expiry of period permissible for reinvestment, it will be charged as long-term capital gains of that year.

Note .--(1) For purposes of benefit of sections 54 and 54F, if the reinvestment cannot be made fully or partly before due date for filing return, such amount is requried to be kept in "Capital gain deposit account scheme" till such time as it is utilised, with consequence as given in row 7, if it remains unutilised till expiry of the time limits.

(2) Other reinvestment benefits under section 54B on sale of agricultural lands, 54-D on compulsory acquisition of industrial undertaking and 54-G on transfer of assets of industrial undertaking on shifting, are not included in the chart.

(3) Finance Bill, 2000, replaces the bonds now eligible for reinvestment benefit under sections 54EA and 54EB by five years bonds under section 54C, such reinvested amount being

deductible from capital gains. It also proposes to relax the condition for reinvestment benefit under section 54F by removing the bar against owning of a residential property prior to the sale of the capital asset, subject to such ownership being limited to a single residential house.

Citizens' charter

To be fair
* By being impartial and objective.
* By collecting taxes as per the law.

To be helpful
* By being courteous and efficient.
* By displaying names, designations, telephone numbers and locations of the officials dealing directly with the public.
* By informing taxpayers as to their rights, duties, entitlements and obligations under the law.
* By providing information, leaflets, forms etc. at the Information and Facilitation Counters.
* By providing information regarding procedures and authorities for legal remedies.

To be efficient
* By settling tax matters promptly and correctly.
* By handling personal and business information / materials furnished to the Department confidentially and as permitted by the law.
* By acknowledging all communication from taxpayers on the spot and in any case within 7 days, and furnishing final replies within 30 days.
* By redressing all complaints and grievances within 30 days.
* By issuing Income Tax Clearance Certificate u/s 230 of Income Tax Act within 7 working days and that u/s 230A of Income Tax Act within 30 days.
* By disposing of all rectification applications u/s 154 of the Income Tax Act within 30 days.
* By giving effect to appellate orders within 30 days of the receipt of such orders.
* By issuing refunds within 30 days of determination.

We expect you
* To be prompt, honest and accurate.
* To pay taxes in time.
* To quote Permanent Account Number (PAN)/GIR Number in all your returns and correspondence.

Model Form No. 34B

Application to Settlement Commission
(See rule 44C and rule 44AC)
Form of application for settlement of cases under section 245C(1) of the Income-tax Act, 1961
In the settlement commission, Additional Bench, Chennai.
Settlement Application No. . . . ., 200 . . . - . . . . .

1.	Full name and address of the applicant	Sea Food Processors Main Road, Cochin.	
2.	Permanent Account Number	C-222/ward-II/Coch	
3.	Status	Firm	
4.	The Commissioner having jurisdiction over the applicant	Commissioner of Income-tax, Cochin	
5.	Assessment year(s) in	1993-94 to 1998-99 and undisclosed income till 10-8-	

	connection with which the application for settlement is made	1999 (date of initiation of search)	
6.	Date of filing the return of income for assessment year(s) referred to in column 5	Assessment year	Date of filing
		1993-94	28-7-1995
		1994-95	31-1-1996
		1995-96	31-1-1997
		1996-97	31-3-1998
		1997-98	28-7-1998
		1998-99	30-11-1998
7.	Proceedings to which application for settlement relates, the date from which pending and the income-tax authority before whom the proceedings are pending	As per Schedule 1 enclosed	
8.	Where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision, as the case may be whether such appeal or revision has been admitted	Not applicable	
9.	Date of seizure, if any, under section 132 of the Income-tax Act	11-8-1999	
10.	Particulars of the issues to be settled, nature and circumstances of the case and complexities of the investigation involved	Please see Annexure	
11.	Full and true disclosure of income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived and the addition amount of income-tax payable on and such income	Income not disclosed estimated at Rs. 15 lakhs is from sources listed in Annexure	

....
Signed
(Applicant)

Verification

I, Raman Kutty, managing partner, M/s. Sea Foods Processors, do hereby solemnly declare that to the best of my knowledge and belief, what is stated above and in the Annexure (including the statement(s) and documents accompanying such Annexure) is correct and complete. I further declare that I am making this application in my capacity as managing partner and that I am competent to make this application and to verify it.

Verified today the 10th day of January, 2000.

Place : Cochin . . . .
Date : 10-1-2000 (Applicant)

Annexure

Model enclosure for Item No. 10 of Form No. 34B

Appendix `A'

Particulars of issues to be settled, nature and circumstances of the case and complexities of the investigation involved.

A. Particulars of the issues to be settled :

1. Determination of the income of the applicant for the assessment years 1993-94 to 1998-99 and undisclosed income from 1-4-1998 till date of search for the block assessment taking into consideration the following matters :

(a) income earned from the applicant's business of trading in sea-foods ;
(b) income earned from the business of running boats ;
(c) income earned from the business of running lorries on hire ;
(d) commission earned from the applicant's agency business of purchasing raw sea foods ;
(e) cash found during the course of search proceedings ; and
(f) reconciliation of documents seized, and statements taken in places searched.

2. Determination of total tax payable for the block period.

3. Settling any other issue or issues that the Settlement Commission might deem fit in the interest of justice.

B. Nature and circumstances of the case :

1. The applicant is a firm, which has been deriving business income since its formation on 14th April, 1992 from trading in sea foods, business of running fishing boats, transport business of running lorries on hire. It has also been acting as a purchasing agent for raw sea foods. Its partners Raman Kutty and Krishnan have their own independent businesses.

2. The premises of an applicant firm and its partners were subject to search under section 132 of the Income-tax Act on 10th day of August, 1999. During the course of search, cash amounting to Rs. 12 lakhs was found in the residence of the managing partner. It was explained that out of Rs. 12 lakhs found, Rs. 2,00,000 represented the amount entrusted to him M/s. Cochin Liquor Distributor of which he is the proprietor and the withdrawals made by him from various accounts in the part and savings of his wife. He had, however, later admitted that about Rs. 10 lakhs related to the firm.

3. Subsequent to the search operations, the files of the applicant firm and partners were transferred to the Assistant Commissioner of Income-tax (Investigation), Cochin. Notice under section 148 were issued for assessment year 1993-94 to assessment year 1997-98 and 143(2) for assessment year 1998-99. Fresh returns in response to notice under section 148 were filed. Revised return was also filed for 1998-99 admitting in all additional liability on income of Rs. 5 lakhs. The applicant firm apprehends that Assessing Officer will treat income of

partners as belonging to firm and also estimate incomes unreasonably. The applicant prays for settlement as proposed in Annexure hereto. He also prays for waiver of interest under section 234A, 234B and 234C and penalties.

C. Complexities of the investigation involved :

1. The applicant submits that the ascertainment of investments firm and its partners, the extent to where such investments could be attributed to undisclosed income of the firm, the years to which these investments relate the exact quantum of such investments and the linking of available sources of funds of each such investment, the right and extent of telescoping and peak credit, would involve complexities.

2. In the absence of proper records and books of account for all transactions, the quantification of the applicant's income from his different businesses and the segregation of partners' separate income for each of the relevant assessment year needs elaborate and complex investigation.

3. The applicant desires to settle the issues involved without resorting to prolonged litigation and offers the case to the jurisdiction of the Settlement Commission.

4. Considering the nature and circumstances of the case and the complexities of the investigation involved, it is requested that this application may be allowed to be proceeded with for settlement.

Place : Cochin . . . .

Date : 10-1-2000 (Applicant)

Application of ruling from authority for advan 17 Application of ruling from authority for advance rulingsce rulings

Statement of the relevant facts having a bearing on the quesion(s) on which the advance ruling is required.

The applicant is a company incorporated in Germany. It has not had any activity thus far in India. It also does not propose to have any office or any permanent establishment in India. It has entered into an agreement for sale and installation a plant which is in the nature of a pre-fabricated metal cooling tower. A Memorandum of Understanding has been signed on 15-10-1998 between the applicant and M/s. Digital Equipments Ltd. 36, Main Road, Ambattur, Chennai - 600 098. It contains the proposed terms on the basis of which a formal agreement subject to the approval of the Government of India, Reserve Bank and other agencies, if required, will be entered in the light of the advance ruling. The applicant has agreed to supply a plant on CIF basis manufactured to accord with the drawings and specifications required by Indian Company as per invoice value at US $1.2 million and installation charges at 10 per cent. of the same for erection services by deputing two engineers who would stay in India for a period not exceeding four months. It is agreed that the supply and installation would be indivisible, though separately billed for accounting purposes. It is further agreed that the machinery would be set up within three months of landing of the plant subject to the Indian party making all arrangements for transit from Chennai Port to the work-site and making available adequate number of trained technicians for the purposes. It is further agreed that the applicant would train an engineer and four technicians deputed by the Indian company to Germany for training at applicant's factory at Hamburg in erection and operation of the plant prior to the date without charging for the same with travel and other expenses being borne by the Indian company. Travelling expenses of the applicant's employees for installation will be borne by the Indian company to and from India besides daily allowance at Rs. 1,000 per day for each person deputed by the applicant to India during their stay in India. The

Memorandum of Understanding and Power of Attorney in favour of the authorised representative are enclosed.

Sd/-

(Applicant)

Place : . . . .

Date : . . . .

Annexure

Statement containing the applicant's interpretation of law or facts, as the case may be, in respect of the question(s) on which advance ruling is required.

The applicant is advised that the agreement is essentially one of sale of a plant, installation service being merely incidental to supply. Such installation is undertaken by the applicant in all its supply contracts in order to ensure that the erection is done properly lest the applicant is made unnecessarily liable under warranty claim under the agreement and possible dispute due to faulty erection by the buyer but wrongly attributing such fault to a defect in the plant supplied. The training imparted to Indian personnel is in Germany and is also incidental to the supply. Notwithstanding the fact that the proposed agreement provides for separate consideration for price and the erection cost the agreement is an indivisible one. The applicant is informed that in such cases the agreement has to be treated solely as a sale agreement and that on a sale of a plant on principal to principal basis no income would arise even according to the circular issued by the Central Board of Direct Taxes in No. 23 of 1969 dated 23-7-1969. The applicant is further advised that this is the position of law in Germany in most other countries including India and Germany in the view that a mere erection or installation incidental to sale of a plant does not constitute sufficient nexus for levy of tax and that there are precedents in Indian law to this effect as in the case of CIT v. Hindustan Shipyard Ltd. [1977] 109 ITR 158 (AP), wherein it was held that an agreement providing for guarantees and deputation of technical personnel for training does not constitute business connection so as to constitute nexus under Indian tax laws (section 9 of the Income-tax Act, 1961) for any liability in India and such a view has been approved in CIT v. Visakhapatnam Port Trust [1983] 144 ITR 146 (AP).

The applicant is further advised that the Double Tax Avoidance Agreement between Germany and India notified in G. S. R. No. 836(E) dated 29th November, 1996 [1997] 223 ITR (St.) 130 would also protect the applicant from Indian tax liability for the reason that such erection would not constitute permanent establishment vide art 5(2)(i) of the Agreement. The condition under article 5(2)(i) that the period of erection should not exceed six months and that the erect cost does not exceed 10 per cent. of sale price are satisfied. Training of Indian personnel is also undertaken outside India.

Under the circumstances the applicant is advised that no part of the income arises in India under Indian law and, at any rate, if any part of the income is construed as liable to tax under the Indian law, it should get exempted under the Double Tax Avoidance Agreement. It is also understood that the salary of employees deputed by the applicant to India would be exempt 10(6)(vi) and that their allowances paid by the Indian company would be exempt under section 10(14) of the Indian law, apart from such amount being relieved of any tax liability, if any, in Indian law because of article 15 of Double Tax Avoidance Agreement.

Double Taxation Avoidance Agreements

Sl.	Name of the	Notification No.	ITR Reference

No.	Country		
1.	Australia	GSR No. 60(E)/22-1-92	194 ITR (St.) 241
2.	Austria	GSR No. 588/5-4-65 corrected by 1250/27-8-65	56 ITR (St.) 17; 58 ITR (St.) 12
3.	Bangladesh	GSR No. 758(E)/8-9-92	198 ITR (St.) 99
4.	Belarus	GSR No. 392(E)/17-7-98	233 ITR (St.) 4
5.	Belgium	GSR No. 323 (E)/6-6-75 corrected by 416(E)/18-7-75; supplemented by 321(E)/2-3-88; 632(E)/31-10-97	101 ITR (St.) 6; 101 ITR (St.) 23; 171 ITR (St.) 231; 228 ITR (St.) 79
6.	Brazil	GSR No. 381(E)/31-3-92	195 ITR (St.) 73
7.	Bulgaria	GSR No. 205(E)/9-5-96	220 ITR (St.) 30
8.	Canada	GSR No. 1108 (E)/25-9-86 amended by 635(E)/24-6-92; Circular No. 638/28-10-92; 28(E)/15-1-98	164 ITR (St.) 87; 198 ITR (St.) 130; 198 ITR (St.) 129; 229 ITR (St.) 144
9.	China	GSR No. 331(E)/5-4-95; 574(E)/14-8-95	214 ITR (St.) 160 corrected by 216 ITR (St.) 52
10.	cyprus	GSR No. 805(E)/26-12-95	218 ITR (St.) 70
11.	Czech Republic	GSR No. 811 (E)/8-12-99	241 ITR (St.) 90
12.	Czechoslovakia	GSR No. 526 (E)/25-5-87 corrected by 659(E)/24-7-90	167 ITR (St.) 23; 187 ITR (St.) 57
Sl. No.	Name of the Country	Notification No.	ITR Reference
13.	Denmark	GSR No. 853(E)/25-9-89	180 ITR (St.) 1
14.	Egypt (U. A. R.)	GSR No. 2363/30-9-69	74 ITR (St.) 11
15.	Federal Republic of Germany	GSR No. 1090/13-9-60 supplemented by F.No.504/2-9-72 and 680(E)/26-8-85 amended by 609(E)/ 30-6-87	40 ITR (St.) 21; 86 ITR (St.) 1; 156 ITR (St.) 90 corrected by 168 ITR (St.) 151
16.	Finland	GSR No. 786(E)/20-11-84 amended by 609(E)/30-6-87; 495(E)/13-8-98	152 ITR (St.) 57; 233 ITR (St.) 84
17.	France	GSR No. 260/18-2-1970 corrected by 394/17-3-71 replaced by 681(E)/7-9-94	76 ITR (St.) 1; 80 ITR (St.) 87; 209 ITR (St.) 130
18.	Germany Democratic Republic (GDR East German)	GSR No. 107(E)/2-3-90 applicable up to 31-12-90 (Circular No. 639/8-9-93)	182 ITR (St.) 357; 203 ITR (St.) 127
19.	Greece	GSR No. 394/17-3-67	64 ITR (St.) 86
20.	Hungary	GSR No. 282(E)/13-3-87 corrected	167 ITR (St.) 4; 187 ITR

		by 623(E)/9-7-90	(St.) 58
21.	Indonesia	GSR No. 77(E)/4-2-88 corrected by 540(E)/3-5-88	171 ITR (St.) 27; 176 ITR (St.) 215
22.	Israel	GSR No.256(E)/26-6-96	222 ITR (St.) 10
23.	Italy	GSR No. 608(E)/8-4-86 corrected by 346(E)/31-3-87	160 ITR (St.) 25; 166 ITR (St.) 140; 200 ITR (St.) 183
24.	Italy (revised)	GSR No.189(E)/25-4-96	220 ITR (St.) 3
25.	Japan	GSR No. 101(E)/1-3-90	182 ITR (St.) 380
26.	Jordan (Hashemite Kingdom)	GSR No. 810(E)/8-12-99	241 ITR (St.) 69
27.	kazakstan	GSR No. 633(E)/31-10-97	228 ITR (St.) 162
28.	Kenya	GSR No. 665(E)/20-8-85	157 ITR (St.) 8
29.	Libyan Arab Jamahiriya	GSR No. 484(E)/1-7-82	137 ITR (St.) 27
30.	Malaysia	GSR No. 167(E)/1-4-77	107 ITR (St.) 36
31.	Malta	GSR No. 761(E)/22-11-95	218 ITR (St.) 13
32.	Mauritius	GSR No. 920(E)/6-12-83 corrected by 816(E)/18-12-84	146 ITR (St.) 214; 151 ITR (St.) 43
33.	Mongolia	SO No. 635(E)/16-9-96	222 ITR (St.) 44
34.	Namibia	GSR No. 196(E)/8-3-98	236 ITR (St.) 230
35.	Nepal	GSR No. 1146(E)/5-12-88	175 ITR (St.) 33
36.	Netherlands	GSR No. 382(E)/27-3-89; modified by 693(E)/30-8-99	177 ITR (St.) 72; 239 ITR (St.) 56
Sl. No.	Name of the Country	Notification No.	ITR Reference
37.	New Zealand	GSR No. 314(E)/27-3-87 corrected by 477(E)/21-4-88	166 ITR (St.) 90; 176 ITR (St.) 214
38.	Norway	GSR No. 756(E)/9-9-87 corrected by 1024(E)/24-10-88	169 ITR (St.) 15; 177 ITR (St.) 31
39.	Oman (Sultanate of)	GSR No. 563(E)/23-9-97	228 ITR (St.) 21
41.	Pakistan	GSR No. 28/10-12-1947, 28-12-47 Not operative from A.Y. 1972-73	16 ITR (St.) 4; 179 ITR (St.) 81
42.	Philippines	GSR No. 173(E)/2-4-96	219 ITR (St.) 60
43.	Poland	GSR No. 72(E)/12-2-90	182 ITR (St.)147
44.	Romania	GSR No. 80(E)/8-2-88	171 ITR (St.) 170
45.	Russian Federation	GSR 507(E)/21-8-98	233 ITR (St.) 190
46.	Singapore	GSR No. 22(E)/18-1-82 corrected by	134 ITR (St.) 6; 138 ITR

		371(E)/8-9-92 replaced by 610(E)/8-8-94	(St.) 5; 209 ITR (St.) 1
47.	spain	GSR No. 356(E)/21-4-95	214 ITR (St.) 197
48.	south KOREA	GSR No. 1111(E)/26-9-86 modified by 986(E)/20-12-90; 198(E)/21-4-98	165 ITR (St.) 191; 187 ITR (St.) 152; 231 ITR (St.) 23
49.	Sri Lanka (Ceylon)	GSR No. 342(E)/19-4-83 corrected by 788(E)/20-11-84	143 ITR (St.) 7; 152 ITR (St.) 196
50.	Sweden	GSR No. 380(E)/27-3-89; 705(E)/17-12-97	178 ITR (St.) 13; 229 ITR (St.) 11
51.	Switzerland	GSR No. 357(E)/21-4-95	214 ITR (St.) 223
52.	Syria (Syrian Arab Republic)	GSR No. 508(E)/25-6-85	155 ITR (St.) 93
53.	Tanzania	GSR No. 559(E)/16-10-81 corrected by 451(E)/8-6-82	132 ITR (St.) 35; 137 ITR (St.) 5
54.	Thailand	GSR No. 915(E)/27-6-86 corrected by 478(E)	161 ITR (St.) 82; 176 ITR (St.) 213
55.	trinidad & tobago	GSR No. 720(E)/26-10-99	240 ITR (St.) 184
56.	Turkey	GSR No. 74(E)/3-2-97	224 ITR (St.) 145
57.	Turmenistan	GSR No. 567(E)/25-9-97	228 ITR (St.) 44
58.	U. A. E.	GSR No. 710(E)/18-11-93	205 ITR (St.) 49
59.	United Kingdom of Great Britain and Northern Ireland	GSR No. 612(E)/23-11-81; corrected by GSR 772(E)/24-12-82; 91(E)/11-2-94	133 ITR (St.) 34; 141 ITR (St.) 35; 206 ITR (St.) 235
Sl. No.	Name of the Country	Notification No.	ITR Reference
60.	United States of America	GSR No. 990(E)/20-12-90 corrected by 342(E)/12-7-91	187 ITR (St.) 89; 197 ITR (St.) 41
61.	United State of Soviet Russia	GSR No. 812(E)/4-9-89 amended by 952(E)/30-12-92; 507(E)/21-8-98	179 ITR (St.) 89; 199 ITR (St.) 75; 233 ITR (St.) 90
62.	uzbekistan	SO No. 790(E)/13-11-96	223 ITR (St.) 60
63.	Vietnam	GSR No. 369(E)/28-4-95	214 ITR (St.) 137
64.	Zambia	GSR No. 39(E)/18-1-84	146 ITR (St.) 233

Rate of withholding tax under Double Taxation Avoidance Agreement

*Dividend declared after 1-6-1997 is exempt under Indian law.

Sl. No.	Name of the Country	Interest	Royalty	Technical fees

(1)	(2)	(3)	(4)	(5)
1.	AUSTRALIA	15%	10%/15%	No Separate provision
2.	AUSTRIA		Taxable only in source country	On net amount attributable to activities in India
3.	BANGLADESH	Exempt if payment to Government or Bangladeshi Bank; 10% in other cases	10%	No Separate provision
4.	BELARUS	10%	15%	15%
5.	BELGIUM	10%/15%	20%	20%
6.	BRAZIL	15%; Exempt if paid to Govt. or its agency or its political sub-division	25% for use of trademarks 15% in other cases	No separate provision
7.	BULGARIA	15%; exempt if beneficially owned by the Government/local authority, Central Bank of other state	15% of gross copyright literary work artistic and scientific work, cinematic films; 20% in other cases	20 %
(1)	(2)	(3)	(4)	(5)
8.	CANADA	15%; Exempt if paid to Govt. or its agency including financial institution	20%	20%
9.	CHINA	10%; Exempt if derived by Govt., Local Authority, Central Bank.	10%; Exempt if derived and owned by Government, political sub-division, local authority Central Bank, wholly Government owned financial institution	Combined with royality same provisions
10.	CZECH REPUBLIC	10%	10%	10%
11.	REPUBLIC OF CYPRUS	10% if interest owned by Government, local authority or political sub-division, Central	15%	10%

		Bank or any agency wholly owned by them; exempt to the extent approved owned by any person if transaction approved by the Contracting State		
12.	CZECHOSLOVAKIA	15%; Exempt if owned by Govt., or its agency or Central Bank of the other State	30%	30%
13.	DENMARK	10% if paid to a bank; 15% in other cases	20%	20%
14.	Egypt (U. A. R.)	Taxed in source country	Taxed in source country	No separate provision
15.	FEDERAL REPUBLIC OF GERMANY	10% if interest on a new loan is paid to a Bank; 15% in other cases	20%	20% of net amount for activities performed in India
16.	FINLAND	15%	30%	30%
17.	FRANCE	Exempt if paid to Government; 10% if loan is guaranteed by a Bank of Financial Institution, 15% in other cases	Rate not prescribed	20%
18.	GERMANY DEMOCRATIC REPUBLIC (GDR EAST GERMAN)	15%	22.5%	22.5%
19.	GREECE	Taxed in source country	Taxed in source country	No separate provision
20.	HUNGARY	15%	40%	20%
21.	INDONESIA	10%; Exempt in source country if paid to Govt. or its agency	15%	NO SEPARATE PROVISION
22.	ISRAEL	10%	10%	10%
23.	ITALY	15%	20%	20%
24.	JAPAN	10% if paid to a	20%	20%

		bank; 15% in other cases		
25.	JORDAN	10%	20%	20%
26.	KAZAKSTAN	10%	10%	10%
27.	KENYA	15%; Interest exempt if paid to Govt. or its agency	20%	17.5%
28.	LIBYAN ARAB JAMAHIRIYA	Taxed in source country	Taxed in source country	No separate provision
29.	MALAYSIA	Taxed in source country	Taxed in source country	No separate provision
30.	MALTA	10%; Exempt if derived by Government, Local authority or agency wholly owned or controlled by Government	15%	--
31.	MAURITIUS	Taxed in source country	Taxed in source country not exceeding 15%	--
32.	MONGOLIA	15%	15%	15%
33.	NAMIBIA	10%	10%	10%
34.	NEPAL	10% if paid to a Bank; 15% in other cases	15%	No separate provision
35.	NETHERLANDS	10% if paid to a bank or enterprise holding 10% of the capital; 15% in other cases	15%/20%/15%	15%/20%/15%
36.	NEW ZEALAND	15%; Exempt if paid to Govt., its local authority, Central Bank	30%	30%
37.	NORWAY	15%; Exempt if paid to Government, local authority, Central Bank	20%	20%
38.	OMAN (SULTANATE OF)	10%	15%	15%
39.	PHILIPPINES	10% if received by Financial Institution;	15% of royalty provided. Such	--

		10% if paid by Co. resident in Philippines on Bonds, debentures, etc. to resident of India 15% in other cases Exempt if owned by the Govt. or its political sub-division, local authority Central Bank and specified lending institutions of the other Contracting State	royalty payable by an enterprise in India pursuant to collaboration agreement approved by Government of India or is payable by an enterprise in Philippines regard with the Board of Investment	
40.	POLAND	15%; Exempt if paid to Govt., local authority Central Bank	22.5%	22.5%
41.	ROMANIA	15%; Exempt if paid to Govt., local authority, Central Bank	22.5%	22.5%
42.	RUSSIAN FEDERATION	10%	10%	10%
43.	SINGAPORE	10% of gross loans given by a bank; 15% in other cases	15% (copy right); 10% (Industrial commercial equipment)	15% (copy right); 10% (Industrial commercial equipment)
44.	SPAIN	15%; Exempt if derived and owned by Government, local authorities or Central Bank or Government approved person to the extent approved	10% of royalties in case of industrial, commercial or scientific equipment	combined with Royalty same provisions
45.	SOUTH AFRICA	10%	10%	10%
46.	SOUTH KOREA	10%	10%	10%
47.	SRI LANKA (CEYLON)	10%; Exempt if paid or received by Government or its instrumentality	10%	No separate provision
48.	SWEDEN	10%	10%	10%

49.	SWITZERLAND	15%; 10% if interest paid to Bank or enterprise holding 20% of capital Exempt if approved loan	15% if paid by Government; 20% in other cases; After 5 years 15%; 10% for use of scientific equipment	No separate provision merged in included service of royalty
50.	SYRIA (SYRIAN ARAB REPUBLIC)	7.5%	10%	No separate provision
51.	TANZANIA	12.5%; Exempt if paid to Government, Local authority State or Central Bank	20%	No separate provision
52.	THAILAND	Exempt if paid to Government; 10% if received by financial institution 25% in other cases	15%	No separate provision
53.	TRINIDBD & TOBAGO	10%	10%	10%
54.	TURKEY	10%/15%	15%	15%
55.	TURMNISTAN	10%	10%	10%
56.	U. A. E.	5% to Bank; 12.5% in other cases Exempt if paid to Government, Local authority Central Bank	10%	No separate provision
57.	UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	10% if paid to a bank; 15% on new loans Exempt if interest paid is on loan made or guaranteed by ECGC EXIM Bank of by UK ECGC Dept	During first 5 years 15% when royalty payer is Government ; 20% in other cases After 5 years: 15% 10% if royalty is in respect of use of scientific equipment	Same provision as for Royalty
58.	UNITED STATES OF AMERICA	10% if paid to a Bank or Financial Institution; 15% in other cases Exempt in case of EXIM Bank & Approved	20%; 15% of payer is Government; After 5 years 15%	For 1st 5 years industrial copyright royalties used services at 20%; 15% after 5 years

		Transaction		
59.	UNITED STATE OF SOVIET RUSSIA	15%; Exempt if derived by Government or Central Bank of other State if loan approved by Government of Lender Country	15%, copyrights of scientific, literary, artistic works 20% in other cases	Same as provision for Royalty
60.	UZBEKISTAN	15%	15%	15%
61.	VIETNAM	10%; Exempt if derived and owned by Government. Local authority or Central Bank or an approved investment if derived and owned by the Government.	10%	10%
62.	ZAMBIA	10%	10%	No separate provision

List of Limited Tax Treaties

Country	Notification No./Date	Subject	ITR Reference
(1)	(2)	(3)	(4)
AFGHANISTAN	GSR No. 514(E)/30-9-75	Income from operation of Aircraft	[1975] 101 ITR (St.) 68
AUSTRALIA	GSR No. 850(E)/19-11-83	Income from International Air transport	[1984] 145 ITR (St.) 24
BULGARIA	GSR No. 184(E)/15-4-77	Income from Carriage of Cargo	[1977] 107 ITR (St.) 54
CZECHOSLOVAKIA	GSR No. 286(E)/3-6-80	Income from Merchant Shipping	[1980] 124 ITR (St.) 5
ETHIOPIA	GSR No. 8(E)/4-1-78 corrected by GSR No. 159(E)/2-3-78	Income from Enterprises operating aircraft with Ethiopia	[1978] 111 ITR (St.) 79
GERMAN DEMOCRATIC REPUBLIC	GSR No. 282(E)/27-4-79	Income from Merchant Shipping	[1979] 118 ITR (St.) 14
IRAN	GSR No. 284(E)/28-5-73	Income of enterprises operating aircraft with Iran	[1973] 91 ITR (St.) 31
ITALY	GSR No. 201(E)/16-4-75	Income of enterprises operating aircraft between	[1975] 99 ITR (St.) 181

		India and Italy	
KUWAIT	GSR No. 302(E)/31-3-83	Income derived from international air transport with Kuwait	[1983] 142 ITR (St.) 85
LEBANON	GSR No. 1552-1553/28-8-69	Income of enterprises operating aircraft with Lebanon	[1969] 73 ITR (St.) 24
OMAN	GSR No. 313(E)/27-8-89	Income from international air transport with Oman	[1985] 155 ITR (St.) 20
PAKISTAN	GSR No. 792(E)/29-8-89	Income from international air transport with Pakistan	[1989] 179 ITR (St.) 81
PEOPLES DEMOCRATIC REPUBLIC OF YEMEN	GSR No. 857(E)/12-8-88	Income from international air transport with Yemen	[1988] 173 ITR (St.) 65
ROMANIA	GSR No. 2203/20-12-86	Income from air transport and shipping trade	[1969] 71 ITR (St.) 9
RUSSIAN FEDERATION	GSR No. 943(E)/23-12-76 modified by GSR No. 419(E)/31-5-84 GSR No. 952(E)/30-12-92	Income from Merchant Shipping with Russian Federation	[1977] 106 ITR (St.) 15 [1984] 148 ITR (St.) 45 [1993] 199 ITR (St.) 75
SAUDI ARABIA	GSR No. 950(E)/29-12-92	Exemption of taxes on income from activities of air transport enterprises	[1993] 199 ITR (St.) 71
SWITZERLAND	GSR No. 761(E)/29-8-58	Income of enterprises operating aircraft with Switzerland	[1958] 34 ITR (St.) 62
UNITED ARAB EMIRATES	GSR No. 969(E)/8-11-89	Income from International air transport with U. A. E.	[1990] 181 ITR (St.) 13
UNITED KINGDOM OF GREAT BRITAIN	GSR No. 38ED/30-6-56	Avoidance of double taxation and of prevention of fiscal evasion w. r. t. duties on estates of deceased persons	[1956] 30 ITR (St.) 19
UNITED STATES OF AMERICA	GSR No. 899(E)/26-11-76 amended by GSR No. 323(E)/18-4-80 GSR No. 626(E)/15-6-89	Avoidance of double taxation of income of enterprises operating ships and aircrafts with U. S. A.	[1976] 106 ITR (St.) 5 [1980] 124 ITR (St.) 43 [1989] 178 ITR (St.) 44
YEMEN ARAB REPUBLIC	GSR No. 2(E)/1-1-87	Income from International air transport with Yemen	[1987] 165 ITR (St.) 227

	Arab Republic	