Study Notes: Tax Administration

Income Tax Authorities [Section 119]

In order to discharge executive and administrative functions relating to the Act, the following Income-tax Authorities have been constituted –

The Central Board of Direct Taxes;

Directors General of Income-tax or Chief Commissioners of Income-tax;

Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals);

Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals);

Joint Directors of Income-tax or Joint Commissioners of Income-tax;

Deputy Director of Income-tax or Deputy Commissioner of Income-tax or Deputy Commissioner of Income-tax (Appeals);

Assistant Directors of Income-tax or Assistant Commissioners of Income-tax;

Income-tax Officers;

Tax Recovery Officers;

Inspectors of Income-tax.

Appointment of Income-Tax Authorities [Section 117]

The Central Government may appoint such persons as it thinks fit to be Income-tax Authorities.

Without prejudice to the provisions of sub-section (1), and subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, the Central Government may authorize the Board, or a Director-General, a Chief Commissioner or a Director or a Commissioner to appoint Income-tax Authorities below the rank of an Assistant Commissioner or Deputy Commissioner.

Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an Income-tax Authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

Control of Income-Tax Authorities [Section 118]

The Board may, by notification in the Official Gazette, direct that any Income-tax Authority or authorities specified in the notification shall be subordinate to such other Income-tax Authority or authorities as may be specified in such notification.

CENTRAL BOARD OF DIRECT TAXES (CBDT) [Sec. 119]

The Central Board of Direct Taxes (CBDT) has been constituted under the Central Board of Revenue Act, 1963. It works under the Ministry of Finance. The important powers of CBDT are:

To make rules for carrying out purposes of the Act [Sec. 295].

To decide jurisdiction of the Income-tax Authorities [Sec. 120].

To issue instructions, orders and directions to other Income-tax Authorities for proper administration of this Act and all other persons employed in the execution of this Act. However, it cannot issue instructions to the Commissioner of Income-tax (Appeals). It cannot issue a direction to any Income-tax Authority to dispose of a case in a particular manner. [Sec. 119].

To declare an organization as company [Sec. 2(17) (iv)].

To entertain objections in respect of search and seizure under the Act. [Sec. 132(1)].

To relax the provisions of Sections 139, 143, 144, 147, 148, 154, 155, 158BFA, 201(1A), 210, 211, 234A,234B, 234C, 271 and 273 or otherwise [Section 119(2)(a)].

Power of relaxing any requirement contained in Chapter IV (provisions for computation of income under various heads) or Chapter VI-A (provisions for deductions from Gross Total Income) [Section 119(2)(c)].

Issue such general or special orders for relaxation of the provisions of sections relating to FBT viz; 115WD, 115WE, 115WF, 115WG, 115WH, 115WJ and 115WK [Section 119(2)(a)].

Prescribe categories of transactions and documents pertaining to business or profession, where quoting of PAN is necessary [Sec, 139A(4)].

Prescribing qualifications for Authorized Representatives [Sec. 288].

Condone delay for seeking CBDT's approval, where it is required [Sec. 293B] and authorize any Income Tax Authority not being Commissioner of Income-tax (Appeals), to admit belatedly ant claim for exemption, deduction, refund or relief [Section 119(2)(b)].

The Act also assign powers and functions in Section 2(18), 11(1)(C), 35(3), 36(1)(iv), 44AA, 80RRA, 80U, 118, 124(2), 127, 132(1), 138, 197(2A), 200, 228A, 246, 273A(2), 279, the Second Schedule and the Fourth Schedule.

Circulars issued by the CBDT are legally binding on the revenue and this binding character attaches to the circulars even if they are found not in accordance with the correct interpretation of a statutory provision and they depart or deviate from such construction - K.P. Varghese vs. ITO 131 ITR 597 (SC).

It is well-settled that circulars can bind the ITO but will not bind the appellate authority or the Tribunal or the Court or even the assessee - CIT vs. Hero Cycles (P.) Ltd. 228 ITR 463 (SC).

CBDT has power, interalia, to tone down the rigor of the laws and ensure fair enforcement of its provision by issuing circular.

Circular contemplated in Sec.119 (2)(a) cannot be adverse to the assessee. Power is given for the purpose of just, proper and efficient management of work of assessment. Circular, however are not meant for contradicting or nullifying any provision of the statue. They are meant to mitigate the rigor of application of a particular provision. So long as such a circular is in favour, it would be binding on the departmental authorities in view of the provision of sec. 119 to ensure a uniform and proper administration & application of the IT Act - UCO Bank vs. CIT 237 ITR 899 (SC).

Director General/Director

The Central Government has power to appoint Director General and Director [Sec. 117]. The CBDT authorize them to perform such functions as may be assigned to them by [Sec. 120]. The powers enjoyed by them include:

to give instructions to Income Tax Officer [Sec. 119(2)]

to enquire or investigate into concealment [Sec. 131(1A)]

to search and seizure [Sec. 132].

To requisition of books of accounts, etc. [Sec. 132A].

To survey [Sec. 133A].

To make an enquiry [Sec. 135].

Commissioners of Income-tax

Commissioners of Income-tax are appointed by the Central Government. A Commissioner of Incometax enjoys the following administrative as well as judicial powers and functions under the different provisions of the Act.

powers pertain to registration of a charitable trust or institution [Sec. 12A(a)];

approval of an annuity contract [Sec. 80E];

appointment of Income-tax Officers (Class II) and Inspectors of Income-tax [Sec. 117(2)];

instructions to subordinate authorities [Sec. 119] ;

shifting of jurisdiction [Sec. 125] ;

transfer of cases [Sec. 127] ;

assignment of functions to Inspectors of Income-tax [Sec. 1281;

discovery, production of evidence [Sec. 131] ;
search and seizure [Sec. 132] ;
requisite books of account [Sec. 132A] ;
any enquiry [Sec. 135] ;
disclosure of information respecting assesses [Sec.138] ;
granting sanction for issue of notice to reopen assessment after the expiry of 4 years [Sec. 151(2)];
authorising Income-tax Officers to recover any arrear of tax due from an assessee by distraint and sale of his movable property [Sec. 226(5)] ;
set off of refunds against tax remaining payable [Sec. 245] ;
directing the Assessing Officer to prefer an appeal to Appellate Tribunal against the order of the Commissioner (Appeals) [Sec. 253(2)] ;
appeal to High Court [Sec. 260A] ;
revision of orders passed by Assessing Officer which are prejudicial to the revenue [Sec. 263]
revision of orders passed by subordinate authorities on his own motion or on the application of the assessee [Sec. 264] ;
reduction or waiver of penalty in certain cases [Sec. 273A] ;
to award and withdraw recognition to provident funds [Schedule IV].

Commissioner of Income-Tax (Appeals)

Appointment is made by the Central Government. The following are important powers:
Power regarding discovery, production of evidence etc. [Sec. 131]
Power to condone delay in filing of appeal.
Power to call for information. [Sec. 133]
Power to inspect register of companies. [Sec. 134]
Power to dispose of an appeal and to confirm, reduce, enhance or annul the assessment. [Sec.251]
Power to impose a penalty. [Sec. 271 and 272A]
Power to set off any refund against arrears of tax. [Sec. 245].
The Commissioner (Appeals) has inherent powers to stay recovery proceedings Paulsons Litho Works vs. ITO 208 ITR 676 (Mad.).

Joint Commissioner of Income Tax

They are appointed by the Central Government. They enjoy the following powers :-
Power regarding discovery, production of evidence, etc. [Sec. 131]
Power of search and seizure, if authorised. [Sec. 132]
Power to call for information. [Sec. 133]
Power to survey [Sec. 133A]
Power to make an enquiry [Sec. 135]
Power to collect certain information [Sec. 133B]
Power to inspect register of companies. [Sec. 134]
Power to sanction reopening of assessment after the expiry of 4 years, if the assessment is made under any section other than sections 143(3) and 147.
Instruction to the Assessign officer [Sec. 119(3)].

Assessing Officer

'Assessing Officer' means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under Section 120 or any other provision of this Act, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed under the said section 120 to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act [Sec. 2(7A)]

The following are some of the powers of Income-tax Officers —
Power regarding discovery, production of evidence, etc. [Sec. 131]
Power of search and seizure, if authorised. [Sec. 132]
Power to requisition books of accounts. [Sec. 132A]
Power to apply the assets seized and retained u/s. 132 in satisfaction of the existing liabilities of the assessee under Direct Taxes Act. [Sec. 132B]
Power to call for information. [Sec. 133]
Power of survey [Sec. 133A].
Power to collect certain information- [Sec. 133B]
Power to inspect register of companies. [Sec. 134]
Power to allot Permanent Account Number. [Sec. 139A]
Power to impose penalties; to issue direction for setting accounts audited [Sec. 142]
Power to make assessment. [Sec. 143, 144]
Power to reassess income which has escaped assessment. [Sec. 147]
Power to rectify mistakes apparent from the records, either on his own or on an application made by the assessee. [Sec. 154]
Power to grant a certificate to an assessee to receive a payment without deduction of tax at
source or deduction of tax at source at a lower rate than prescribed [Sec. 197]
Power to grant refund. [Sec. 237, 240]

Inspectors of Income Tax

Inspectors are appointed by the Commissioner of Income Tax.

They have to perform such functions as are assigned to them by the Commissioner or any other Incometax Authority under which they are appointed to perform their functions.

In case of survey, inspectors have power to inspect books of account and other documents, place marks of identification, to take statements at any function, ceremony or event [Sec. 133A].

Change of incumbent of an office [Section 129]

Whenever in respect of any proceeding under this Act an Income-tax Authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the Income-tax Authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.