

## JURISDICTION OF INCOME-TAX AUTHORITIES UNDER CORPORATE TAXATION SYSTEM

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### ABSTRACT

*Income Tax has an important share in the GDP (Gross Domestic Product) of the nation. Under Income Tax Act 1961 the tax authorities have special authorities and responsibilities regarding the tax assessment and tax collection. Many a times situation has had arise about the overlapping of power between two officers. Sections 120 to 130A deal with the Jurisdiction of Authorities. There are certain lacunas related to the overlapping of power between various officers of the tax department. The main lacuna which I see is under section 127 which talks about transfer of cases. Court done a blunder in saying that it is discretion of Appellate Assistant Commissioner has discretion in permitting or not permitting the assessee to raise an additional ground. If it can be told that Income-tax Tribunal is Quasi-Judicial body then all basic parts of laws must be applied on it. Under this paper I try to discuss almost all aspects of the jurisdiction available under the Act. Sections which are presently in existence talk about Jurisdiction of Tax Authorities, Jurisdiction of Assessing Officers, Transfer of Cases and Change of incumbent of office. The rest issues are discussed through certain cases decided in the Court.*

Keywords: corporate tax, assessing officer, jurisdiction, tax authorities, appellate tribunal.

### **Introduction**

Jurisdiction of Income Tax Authorities is very sensitive subject under the Income Tax Act for the reason that it deals with core issue of tax law that which authority has power to what extent. Many a times situation has had arise about the overlapping of power between two officers. Sections 120 to 130A deal with the Jurisdiction of Authorities. At present all section has been omitted, except 4 sections. These 4 sections deal elaborately about the jurisdiction of the

Tax-authorities and discuss almost all aspects. There were situations where question had arisen about the conflict of the jurisdiction in plethora of cases. These cases are corner stone in deciding and expanding the scope of this topic under the tax Act.

Under this paper I try to discuss almost all aspects of the jurisdiction available under the Act. Sections which are presently in existence talk about Jurisdiction of Tax Authorities,<sup>1</sup> Jurisdiction of Assessing Officers,<sup>2</sup> Transfer of Cases<sup>3</sup> and Change of incumbent of office.<sup>4</sup> These four heading under the Income-Tax Act cover substantial part of the jurisdiction of tax-authorities. Moreover, the rest flaws are covered and discussed at length in various landmark cases which put foundation stone of this topic. Certainly there are few stances where court also fails to take note of certain intricacies of the subject.

### **Research method**

Two ways of research have been followed in completing this paper.

1. Analytical research
2. Applied research

As far analytical is concerned materials and essential readings were made through different books and articles and application of mind was done to understand it in a better manner. In applied section I have tried to answer the question that arose in my mind in this regard and I attempted to answer them at the end of every section of this paper.

### **Jurisdiction of Tax Authorities**

Sub-section (1) of section 120 provides that income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or assigned to them by or

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<sup>1</sup> See, Section 120 of the Income Tax-Act,1961. Also see Annexure-A.

<sup>2</sup> See, Section 124 of the Income Tax-Act,1961. Also see Annexure-A.

<sup>3</sup> See, Section 127 of the Income Tax-Act,1961. Also see Annexure-A.

<sup>4</sup> See, Section 129 of the Income Tax-Act,1961. Also see Annexure-A.

under the Income Tax Act. Further, they will exercise or perform such powers or functions in accordance with the directions of the Board.

The Board under sub-section (2) of section 120 may authorise any other income-tax authority to issue orders in writing to the other income-tax authorities who are subordinate to it, for the exercise of powers and performance of the functions. Such authorisation will be made by the Board by issuing directions.

Sub-section (3) of section 120 provides that in issuing directions or orders under sub-sections (1) and (2), the Board or other income-tax authority authorised by it, may follow any one or more of the following criteria, namely :

- (a) Territorial area;
- (b) Person or classes of person;
- (c) Income or classes of income; and
- (d) Cases or classes of cases.

Authorisation for performing functions of other income-tax authority is given under Section 120(4).

### **Scope of Section 120**

Ordinarily assessing officer has power to make assessment in cases falling under his jurisdiction and in some exceptional or special cases same can be given by CBDT to Joint Commissioner, but by giving powers to Joint Commissioner under section 120(4)(b) in special cases, assessing officers have not been divested of their powers to carryout assessment according to section 120(1) and (2) of Act and also assessee cannot be given discretion to choose its officer.<sup>5</sup>

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<sup>5</sup> B. R. Industries Ltd. v. CIT & Ors. (2003) 30 DTC 386 (Del-HC); (2002) 255 ITR 593 (Del).

Director of Income Tax (Exemption) who is authorised by CBDT *Notification dated 17-10-1989* to perform all functions of Commissioner in cases of assessee claiming certain exemption has all powers of Commissioner including power of revision under section 263.<sup>6</sup>

### **Writ for issuing direction to income-tax authorities**

Where the court was satisfied that the income-tax authorities were *bona fide* looking into the matter as was expected of them under the law, there was no need to issue any directions to them or to keep the petition pending since High Court could not be expected to assume the powers of the statutory authorities or guide their hand and action in a particular direction.<sup>7</sup>

### **Court can order Mandamus**

It is implicit in the nature of power and its entrustment to the authority invested with functions of assessment under the Act to exercise the power when the conditions for its exercise are shown to exist and refusal to exercise the powers when required to be exercised under the law would amount to failure the duty. Thus, if there is failure of duty on the part of the tax authority in discharging its statutory functions, then obviously the High Court will have the jurisdiction under Article 226 of the Constitution for issuing the writ of mandamus. This has nothing to do with the power of the Supreme Court under Article 142 of the Constitution, since the high court would in such case be exercising its own constitutional power under article 226 and will not be assuming the plenary powers of the Supreme Court under the said Article 142.<sup>8</sup>

### **Jurisdiction of Income Tax Officers**

Section 124 of the Act says about the Jurisdiction of Income-tax Officers. Jurisdiction, in law, means the authority to take cognizance and decide matters in respect whereof the court, Tribunal or authority is empowered to perform its functions under any statute. The power to

<sup>6</sup> *Trustees of Parsi Panchayat Funds & Properties v. Director of Income Tax (1996) 57 ITD 328 (Bom-Trib).*

<sup>7</sup> *Jayamal Jayantilal Thakore v. (Chief) CIT (1998) 2 DTC 248 (Guj-HC).*

<sup>8</sup> *Jayamal Jayantilal Thakur v. Chief CIT, (1998) 230 ITR 142 (Guj).*

confer jurisdiction is imposed by statute and may be delegated to appropriate authority by its provisions.<sup>9</sup>

### **Role of assessing officer**

The assessing officer has important statutory functions to discharge. In the very nature of the things empowered to be done, and in the very nature of the object for which the provisions of the Income Tax Act, 1961 are enacted, as also the conditions in which the powers are to be exercised by the assessing officers under the Act.<sup>10</sup> Functions of assessing officer are fundamentally quasi-judicial.<sup>11</sup>

### **Assessing Officer is not a Court**

Though proceedings before the assessing officer are judicial proceedings in a court and section 195(1) (b), of the Code of Criminal Procedure Code, 1898, applies the assessing officer could not be treated as a revenue court.<sup>12</sup>

### **Assessing officer has absolute power regarding assessment**

The determination by the assessing officer may be questioned in proceedings before the superior Tribunals which are permitted by the Act, but the assessing officer cannot be prevented from determining a question which properly arises before him for the purpose of assessment of tax, merely because his determination may not bind some other body or person *qua* the assessee.<sup>13</sup>

## **Statutory Scheme of Section 124**

### **1. Territorial jurisdiction of assessing officer [Section 124(1)]**

<sup>9</sup> ITO v. Ashoke Glass Works (1980) 125 ITR 491 (Cal).

<sup>10</sup> Jayamal Jayantilal Thakore v. Chief CIT (1998) 2 DTC 248 (Guj-HC).

<sup>11</sup> According to M. Chettiappan v. ITO (1968) 67 ITR 106 (SC).

<sup>12</sup> According to Balwant Singh v. L.C. Bharupal, ITO (1928) 70 ITR 89 (SC).

<sup>13</sup> Chhatrasinghji Kesarisinghji Thakore v. CIT (1966) 59 ITR 562 (SC).

According to sub-section (1) of section 124 where by virtue of any direction or order issued under sub-section (1) or sub- section (2) of section 120, the assessing officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) In respect of any other person residing within the area.

According to *Smt. Sohani Devi Jain v. ITO*<sup>14</sup> section 124 speaks only of jurisdiction of the assessing officer and has not used the word “territorial” so as to confine its scope to territorial jurisdiction. Jurisdiction includes both territorial and other kinds of jurisdiction.

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## 2. Determination of jurisdiction of assessing officer [Section 124(2)]

According to sub-section (2) of section 124 where a question arises as to whether an assessing officer has jurisdiction to assess any person, the question shall be determined by the Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to area within the jurisdiction of different Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.

<sup>14</sup> (1977) 109 ITR 130 (Gau).

<sup>15</sup> *Ibid.*

(i) **Jurisdiction of assessing officer:** The validity of assessments against errors in exercise of jurisdiction is protected if there has been no injustice to the assessee and he has been assessed only by an officer having jurisdiction over the area in which the assessee resides or carries on his business and also having pecuniary jurisdiction over the case.<sup>16</sup>

(ii) **Territorial Jurisdiction:** Where question as regards to territorial jurisdiction of assessing officer is raised by the assessee, assessing officer is neither competent nor empowered to decide the question and he has to refer matter for determination to authorities mentioned in section 124(2).<sup>17</sup>

### Transfer of Cases

Section 127 empowers the Director General or Chief Commissioner or Commissioner to transfer any case from one or more assessing officers subordinate to him (whether with or without concurrent jurisdiction), to any other assessing officer or assessing officers (whether with or without concurrent jurisdiction) also subordinate to him but any such transfer can be made, however, only after giving the assessee an opportunity of being heard. In order to give any such opportunity, a notice is given to the assessee.<sup>18</sup>

### A Case Analysis

In case of *K.P. Mohammed Salim Vs. Commissioner of Income-tax, Cochin*<sup>19</sup> the matter relating to the conflict of section 127 (2)<sup>20</sup> & Section 158BC come before the court.

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<sup>16</sup> CIT v. Ram Niwas Jagnarayan (1996) 57 ITD 572 (JP-Trib).

<sup>17</sup> Amulya General Trading & Agencies Ltd. v. CIT (1995) 55 ITD 233 (Del-Trib).

<sup>18</sup> See Annexure-A.

<sup>19</sup> [2008] 300 ITR 302(SC).

<sup>20</sup> Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,-

**FACTS:** A search was conducted by the Officers of the Income Tax Department in the residence as also in the business premises of the assessee, his sons and other associates, consequent whereupon, it was proposed to transfer the cases pertaining to the assessee to the Income Tax (Inv.) Circle, Calicut to facilitate effective and coordinate investigation. An order was passed to that effect by the Chief Commissioner of Income Tax, Bangalore under Section 127(2) of the Act. A notice was issued by the Assessing Officer under Section 158BC of the Act to file a return setting forth the total income including the undisclosed income for the block period.

A notice was thereafter issued by the assessing authority asking the assessee to file a return setting forth the total income including the undisclosed income for the block period. Pursuant thereto, the return was filed. The purported undisclosed income of the assessee was determined.

**Issue in Matter** The said order of the Assessing Officer, Calicut was challenged on the ground that he had no jurisdiction to make the block assessment as the authority therefore remained with the Assessing Officer originally having the jurisdiction over the assessee.

### **Court Decision**

The Court finally relied in the case of *Mukutla Lalita v. Commissioner of Income Tax and Ors.*<sup>21</sup> held that the impugned order passed under Section 127 hence cannot be faulted by saying that the section was not applicable. It is also not correct, as has been contended, that giving a notice under Section 127 in the event of a proceeding under Chapter XIV-B would be a mere formality without any substance as records are to be compulsorily handed over to the officer

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(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

<sup>21</sup> MANU/AP/0214/1997.

under Section 158BG. While in most of the cases the submission may be correct, yet it is conceivable that in some cases, reasonable opportunity being given as contemplated under Section 127(1) or (2) of the Act, the person concerned may be able to convince the authority giving the notice that he is actually unrelated or unconnected to the proceeding started under Chapter XIV-B. If such conclusion is reached, the authority at that stage may disassociate the person concerned from the specific proceeding in Chapter XIV-B and may not transfer the papers to the other officer. As has been fairly pointed out by learned standing counsel himself, the provisions of Section 127(1) apply when the transfer is contemplated not only between the officers of the subordinate rank but also officers either with or without concurrent jurisdiction. Hence, even when the records are to be transmitted to the officer not higher in rank than the officer to whom the papers are handed over in the first instance under Section 158BD, the provisions of Section 127 are to be complied with to give notice. The court further says that:

*“The power of transfer is in effect provides for a machinery provision. It must be given its full effect. It must be construed in a manner so as to make it workable. Even Section 127 of the Act is a machinery provision. It should be construed to effectuate a charging Section so as to allow the authorities concerned to do so in a manner wherefore the statute was enacted.”*

## **Change of Incumbent of an Office**

### **1. Statutory Scheme [Section 129]**

According to section 129<sup>22</sup> of the Income Tax Act whenever in respect of any proceeding under the 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. However, according to proviso to section 129, 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.

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<sup>22</sup> See Annexure-C.

## 2. Procedural character

Section 129 does not legislate a mandate and is conditioned by a proviso requiring rehearing of the concerned assessee. Apart there from, the provision is also clearly of a procedural character as a guide line in a situation where the assessing officer changes allowing his successor to assume the concerned office.<sup>23</sup>

### Jurisdiction of Tribunal – A Case Analysis

In the case of *National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax*<sup>24</sup> the matter relating the Jurisdiction of the Tribunal came into question.

**Facts:** During the assessment year 1978-79, the assessee had deposited its funds which were not immediately required, on short-term deposits with banks. Interest received on such deposits during the previous year relevant to the assessment year 1978-79 amounted to Rs. 22,84,994/-. This was offered by the assessee for tax assessment and the assessment was completed on that basis. Before the Commissioner of Income-tax (Appeals), a number of grounds were taken by the assessee challenging the assessment. However, the inclusion of this amount of Rs. 22, 84,994 was neither challenged by the assessee nor considered by the Commissioner of Income-tax (Appeals). From the order of the Commissioner of Income-tax (Appeals), the assessee filed an appeal before the Tribunal. The inclusion of the said amount of Rs. 22,84,994/- was not objected to even in the grounds of appeal as originally filed before the Tribunal. However, by a forwarding letter dated July 16, 1983, the additional grounds were sought to be raised by the assessee.

**Issue Involved in Matter** Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee, whether the Tribunal has jurisdiction to examine the same?

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<sup>23</sup> *Aspinwell & Co. Ltd. v. CIT* (1996) 220 ITR 617 (Ker).

<sup>24</sup> [1998] 229 ITR 383 (SC).

### Final Decision of the Court

Relying on the decision of *Jute Corporation of India Ltd. v. C.I.T.*<sup>25</sup> Court held that while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

### Conclusion

Sections which dealt in the paper about the jurisdiction of the Tax-Authorities are covered substantial part of the jurisdiction part. There are certain lacunas related to the overlapping of power between various officers of the tax department. The main lacuna which I see is under section 127 which talks about transfer of cases. The decision of the Supreme Court in recent Judgment<sup>26</sup> which, discussed above, send improper message towards the sensibility of the court. Court done a blunder in saying that it is discretion of Appellate Assistant Commissioner has discretion in permitting or not permitting the assessee to raise an additional ground. If it can be told that Income-tax Tribunal is Quasi-Judicial body then all basic parts of laws must be applied on it. Like Section 11 of Civil Procedure Code talks about the *Constructive*

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<sup>25</sup> MANU/SC/0044/1991.

<sup>26</sup> Supra note 24.

*Res Judicata* which provides that if a plea could have been taken by a party in a proceeding between him and his opponent, he should not be permitted to take that plea against the same party in a subsequent proceeding with reference to same subject. Therefore, in this case the Supreme Court fails to apply this very basic principle of law and hence, fails to provide good and reasonable judgment. If Courts will also sometime fail to provide justice then expectation of people would be seen decreasing and Justice would be like a nightmare for the people.

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