CHAPTER-XX
PROTECTION OF INFORMATION

Sec. 163: Statements, returns, etc. to be confidential.–(1) Save as provided in this section, all particulars or information contained in the following shall be confidential and shall not be disclosed, namely:–

(a) any statement made, return furnished or accounts or documents produced under the provisions of this Ordinance;

(b) any evidence given, or affidavit or deposition made, in the course of any proceedings under this Ordinance other than proceedings under Chapter XXI;

(c) any record of any assessment proceedings or any proceeding relating to the recovery of demand under this Ordinance.

(2) Notwithstanding anything contained in the Evidence Act, 1872 (I of 1872) or any other law for the time being in force, no Court or other authority shall, save as provided in this Ordinance, be competent to require any public servant to produce before it any return, accounts or documents contained in, or forming a part of, the records relating to any proceeding under this Ordinance or to give evidence before it in respect thereof.

(3) The prohibition under sub-section (1) shall not apply to the disclosure of–

(a) any particulars, or in respect of any statement, return, accounts, documents, evidence, affidavit or deposition required for the purposes of prosecution of an offence under this Ordinance, the Penal Code (XLV of 1860), or the Foreign Exchange Regulation Act, 1947 (VII of 1947);

(b) any particulars or information which is necessary for the purposes of this Ordinance to any person acting in the execution of this Ordinance, or of any particulars to any person being an expert whose services have been placed at the disposal of the Government by any international organization of which Bangladesh is a member,

(c) any particulars or information which is occasioned by the lawful employment under this Ordinance of any process for the service of any notice or the recovery of any demand;

(d) any particulars of the amount due from an assessee under this Ordinance by the Board or any officer authorised by it, or by the Commissioner, to any department of the Government, local authority, bank, corporation or other organization for the purpose of the recovery of any demand;

(e) any particulars to a Civil Court in any suit which relates to any matter arising out of any proceeding under this Ordinance and to which Government is a party;

(f) any particulars to the Controller and auditor-General of Bangladesh for the purpose of enabling him to discharge his functions under the Constitution;

(g) any particulars to any officer appointed by the Controller and Auditor-General of Bangladesh or the Board for the purpose of auditing tax receipts or refunds;

(h) any particulars relevant to any inquiry into the conduct of any official of the income tax department to any person appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of any such inquiry;

(i) any particulars relevant to any inquiry into a charge of misconduct in connection with income tax proceedings against a lawyer, a chartered accountant or a cost and management accountant to any authority empowered to take disciplinary action against such lawyer, chartered accountant or cost and management accountant;

(j) any particulars by a public servant where the disclosure is occasioned by the lawful exercise by him of the powers under the Stamp Act, 1899 (II of 1899), to impound an insufficiently stamped document;

(k) any facts to an authorised officer of the Government of any country outside Bangladesh with which the Government of the People's Republic of Bangladesh has entered into an agreement for the avoidance of double taxation and the prevention of fiscal evasion where such disclosure is required under the terms of the agreement;

(l) any such facts to any officer to the Government as may be necessary for the purpose of enabling the Government to levy or realise any tax imposed by it;

(m) any such facts to any authority exercising power under the Excise and Salt Act, 1944 (I of 1944), the Gift-tax Act, 1963 (XIV of 1963) দানকর আইন, ১৯৯০ (১৯৯০ সনের ২২ নং আইন), the Wealth-tax Act, 1963 (XV of 1963), the Customs Act, 1969 (IV of 1969), the Sales tax Ordinance, 1982, (XVIII of 1982) or মূল্য সংযোজন কর আইন, ১৯৯১ (১৯৯১ সনের ২২নং আইন), as may be necessary for the purpose of enabling it duly to exercise such powers;

(n) so much of any such particulars, to the appropriate authority as may be necessary to establish whether a person has or has not been assessed to income tax in any particular year or years, where, under the provisions of any law for the time being in force, such fact is required to be established;

(o) any such particulars to the Bangladesh Bank as are required by that Bank to enable it to discharge its functions under the foreign exchange control laws or to compile financial statistics of international investments and balance of payments;

(p) any such information as may be required by any officer or department of the Government for the purpose of investigation into the conduct and affairs of a public servant;

(q) any such particulars as may be required by any order made under section 19(2) of the Foreign Exchange Regulation Act, 1947 (VII of 1947); or

(r) a list of highest tax payers in accordance with rules made in this behalf.

(4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 90 or 111, or to the giving of evidence by a public servant in respect thereof.

(5) Any person to whom any information is communicated under this section, and any person or employee under his control, shall in respect of that information, be subject to the same rights, privileges, obligations and liabilities as if he were a public servant and all the provisions of this Ordinance shall, so far as may apply accordingly.

(6) This section shall not be construed as prohibiting the voluntary disclosure of any particulars referred to in sub-section (1) by the person by whom the statement was made, return furnished, accounts or documents produced, evidence given or affidavit or deposition made as the case may be.

Income-tax records are confidential.–Sec. 163: Scope of the section.–This section provides, on the ground of public interest, that the records of income-tax assessments and of other proceedings under this Ordinance should be kept confidential and no public servant should be required to produce the same in a Court of law. The object, no doubt, is to enable people to feel that they can freely state the facts relating to their income, facts which may often involve confidential matters relating to their business, without fear of the matters being disclosed to others *(Emperor* v. *Osman Chotani 1942 I.T.R. 429; Banarsi Devi* v. *Janki Devi [1969] 37 I.T.R. 510, 512)*. It was held in the cases that "a person other than the assessee has no right to inspect or obtain copies of documents considered confidential under section 54 nor can such a person produce these documents in evidence unless he comes within the purview of section 54(3). The following propositions emerge from a plain reading of the section itself:–

(a) All particulars contained in any statement, return, accounts, documents or other evidence on the record of any proceedings under this Ordinance are treated as confidential, and no Court, save as provided in this Ordinance, is entitled to *require* any public servant to produce before it any such return, accounts, documents, or record or to give evidence, affidavit or deposition made in respect thereof *(Charu Chandra Kundu* v. *Gurupada Ghosh [1961] 43 I.T.R. 83 (S.C. of India))* "in view of section 54 the Court is not authorised to require an I.T.O. to produce in a Civil suit a statement made by a creditor in the assessment proceedings to prove that the assessee had paid his debt. The provision imposed against the Court by section 54 is absolute, its operation is not obliterated by any waiver by the assessee in whose assessment the evidence is tendered, document produced or record prepared

(sub-s. (1)). The section excludes not only evidence of a public servant as to the contents of documents produced before the Income-tax authorities or any record of any assessment proceedings or any proceedings relating to the recovery of demand but also evidence of the fact that certain documents had been produced before them. Income-tax authorities cannot, therefore, be summoned to give evidence that certain account books had been produced before them *(Sayad Ashgar Ali Shah* v. *Achru Mal 1934 I.T.R. 384)*.

Any disclosure by a public servant of any particulars contained in the confidential documents and records is also forbidden (sub-s. (2)). Thus even the *voluntary* production of such documents or records in Court by a public servant is prohibited by this section, and such documents voluntarily produced would not be admissible.

(b) The *proceedings themselves* must be conducted in a *confidential manner*. In the case of a personal assessment on an assessee who happens to be a partner in a firm, Deputy Commissioner of Taxes would not be justified in allowing even the assessee's partner who is not concerned with the assessment to be present at and to take part in the assessment proceedings *(Dinshaw Shroff* v. *C.I.T. 1943 I.T.R. 172)*.

(c) The prohibition against disclosure does not apply to the disclosure of such facts and particulars and in such cases and circumstances as are specified in sub-s. (3), or to the disclosure of any evidence given or affidavit or deposition made in the course of any criminal proceedings under Chapter XXI (Offences and Prosecution).

(d) This section does not operate to bar the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under s. 90 (inquiry into partition of a Hindu undivided family) (sub-s. (4)).

If a public servant discloses any matter which is declared by this section to be confidential, he is liable to prosecution with the previous approval of the Board (sec. 169), and is punishable with imprisonment which may extend to six months and is also liable to fine (s. 168).

The Deputy Commissioner of Taxes is subject to every process of the Court. He can be summoned to attend the Court, though under this section the Court cannot require him to produce before it the documents classed as confidential by this section *(Mythili Ammal* v. *Janaki Ammal 1939 I.T.R. 657, 660)*. In a Bombay case *(Official Assignee* v. *Mustafa Murtaza 1950 I.T.R. 751)*, Bhagwati, J., held that it is not necessarily all the books of account which are physically produced before the Deputy Commissioner of Taxes that really come within the ban imposed by this section, but only those accounts and entries in the books of account which are in the course of the investigation produced in the sense that they are communicated by the assessee to the Deputy Commissioner of Taxes and brought to his notice; the Deputy Commissioner of Taxes may be compelled to produce the other entries contained in the books of account, which have no relevance whatever to his investigation of the particular case. Likewise, the Deputy Commissioner of Taxes may be compelled to produce the

vakalatnama filed by an advocate *(Bahl* v. *Magh Raj [1961] 42 I.T.R. 308)* or a letter written by an assessee's accountant asking for return of some documents *(Jagadeswariah* v. *Pingle Vijayapal Reddy [1963] 47 I.T.R. 300).*

The disclosure prohibited by this section is a disclosure for purposes other than those of the income-tax proceedings. If the Appellate Joint Commissioner of Taxes in the course of the hearing of an appeal, asks the Deputy Commissioner, who may not be the assessing Officer, to scrutinise the accounts of the assessee and make a report, the provisions of this section would not be violated *(Haji Ahmad Haji Esak & Co.* v. *C.I.T. [1951] 19 I.T.R. 331).*

Documents covered by this section are admissible as evidence.–This section contains a mandatory direction to the officials and other public servants in the Income-tax Department to treat as confidential the records and documents mentioned in the section; and secondly, it prohibits the Court from requiring or allowing any public servant to produce before it any such document or record or to give evidence in respect thereof. But if the document can be given in evidence without requiring a public servant to produce it, the Court may allow the document to be tendered *(Emperor* v. *Osman Chotani 1942 I.T.R. 429).* It was held in this case that "there is nothing in section 54 of I.T. Act to prevent a police officer from producing a document lawfully seized from the income-tax authorities, which those authorities themselves would not be able to produce. It is now well established that there is nothing in this section to justify the extreme view that the documents referred to in this section cannot be admitted in evidence at all *(Rama Rao* v. *Venkataramayya 1940 I.T.R. 450 (F.B.) and allied cases).* "The record of an income-tax case must be regarded as the record of the acts of the Income-tax Officer in making his assessment and therefore, any document properly on the record is just as much a public document within the meaning of section 74 of the Evidence Act of which certified copies would be admissible under section 65(c) of the Evidence Act".

Documents produced in evidence by assessee.–It is thus clear that the Court may admit in evidence documents covered by sub-s. (1) of this section. The next question is, can the documents be produced in evidence by *any* party? There is ample authority for the proposition that it is open to the *assessee,* if he so chooses, to waive the privilege of non-disclosure and to give evidence of the contents of his return of income, assessment order or other documents and records referred to in this section. This section does not prohibit the giving of such evidence by the assessee *(Rama Rao* v. *Venkataramayya 1940 I.T.R. 450 (F.B.))* or his representative in interest *(Narbadashankar Manoharlal Jaiswal* v. *Jamnabai Manoharlal [1963] 47 I.T.R. 44).* This rule which was implicit in s. 54 of the 1922 Act is now partially enacted in sub-s. (6) which is considered below.

Where in the course of *assessment proceedings against a firm,* one partner makes a statement on behalf of the firm, the grant of certified copies of that statement by the Deputy Commissioner of Taxes to other partners of the firm would not be illegal, and any of the other partners may produce the certified copy of such a statement in evidence *(Venkatramana* v. *Varahalu 1939 I.T.R. 560).* Similarly where an assessment has been made on a firm, any of the partners may produce in evidence

a certified copy of the assessment order to prove, for instance, the fact that he was a partner in the firm *(Suraj Narain* v. *Jhabhu Lal 1945 I.T.R. 13)*. But even the assessee cannot utilise any process of the Court against a public servant to get in evidence any of the documents covered by this section. Thus where some of the partners of a firm had, in the course of proceedings in respect of the assessment of the firm, deposited the account books of the firm with the Deputy Commissioner of Taxes, the other partners were held not entitled to compel the production of the account books by a Court summons against the Deputy Commissioner of Taxes *(Rangaswami Naicker* v. *Raju Naicker 1941 I.T.R. 693)*. So also the Supreme Court of India held in *Charu Chandra Kundu* v. *Gurupada Ghosh ([1961] 43 I.T.R 83))* that the defendant to a suit could not ask the Court to issue summons to the Income-tax authorities to produce the statement made by the plaintiff in the defendant's own assessment proceedings. Shah, J., observed: "The prohibition imposed against the Court by s. 54 [of the 1922 Act] is absolute: its operation is not obliterated by any waiver by the assessee in whose assessment the evidence is tendered, document produced or record prepared" *([1961] 43 I.T.R. 83, 86. See also C.I.T.* v. *Laxmichand Narayandas [1962] 44 I.T.R. 548 (S.C. of India))*.

Can documents be produced in evidence by persons other than assessee.—On the further question whether a document or record referred to in this section can be produced in evidence by a person *other than the assessee or his representative in interest*, there is a conflict of judicial opinion. One view is that a person other than the assessee or his representative in interest cannot be allowed to produce certified copies or otherwise give evidence of the contents of such documents *(Anwar Ali* v. *Tafozal Ahmed 1 I.T.C. 377)*. Nor can the Court require an assessee at the instance of the other side, to produce certified copies or otherwise give evidence of the documents falling within this section *(Velayudham Pillai* v. *Subramania Pillai 1941 I.T.R. 275)*. It is open to a party to a suit to refuse to answer interrogatories administered by his opponent on statements made by him in income-tax proceedings on the ground that they are privileged *(Shama Rao* v. *Motiram 1934 I.T.R. 436)*. The other view is that a person other than the assessee, *i.e.*, a third party who has nothing to do with the assessment, is entitled to prove the contents of any such documents or records, subject to the provisions of the Evidence Act regarding relevancy and the mode of proof *(Devidatt* v. *Shriram 34 Bom. L.R. 236)*.

In the case of *Muniyamal* v. *Third Addl. I.T.O. (1960) 2 Tax (III-314)* the question arose whether a legal representative can claim copies of returns submitted by the deceased. In this case the deceased died leaving a widow, a daughter and a mother. The widow established herself as the sole successor of the deceased by way of submitting returns and paying the tax. The mother of the deceased applied for certified copies of the returns and the assessment orders, on a reference to the High Court it was held that the mother had no specific interest in the assessment nor she paid the tax, therefore, she was not entitled to have copies of the assessment record.

The above decisions must now be read subject to the provisions of sub-s. (6) which permits the voluntary disclosure of any particulars referred to in sub-s. (1) by the person by whom the statement, affidavit or deposition was made, the evidence given, the return furnished, or the accounts or documents produced, as the case may

be. Sub-sec. (6) applies to the assessee as well as to any person who gives evidence or produces a document in the assessment proceedings of another person. The two limiting features of that sub-section are that-

(a) it permits only voluntary disclosure and does not enable the Court to require any person to disclose the confidential particulars, and

(b) it permits voluntary disclosure only by the person who made the statement, affidavit or deposition, or gave the evidence, or furnished the return, or produced the accounts or documents.

There was no provision in s. 54 of the 1922 Act corresponding to the present sub-s.(6).

"Public servant".–The Bombay High Court held in *Emperor* v. *Osman Chotani (1942 I.T.R. 429)* that in providing that the documents are to be treated as confidential the Legislature only meant that they are to be treated by the *Income-tax authorities* as confidential. In *Osman Chotani's* case a police officer was held entitled to produce in evidence a document lawfully seized from the Income-tax authorities, which those authorities themselves would not have been able to produce. The Court held that the police officer was not included in the expression "public servant" in the old s. 54. A Full Bench of the Punjab High Court held in *I.T.O.* v. *The State (1950 I.T.R. 688)* that a search warrant issued by a Court (in a case not falling within sub-s. (3)) authorising the police to enter the Income-tax office and seize documents covered by sub-s. (1) would be illegal. Kapur, J., who was one of the members of the Full Bench, dissenting from the Bombay view also held that the expression "public servant" in the old s. 54 included a police officer. It is therefore, important to note that the Full Bench in the Punjab case rested their judgment on the ground that even assuming "public servant" did not include a police officer, the search warrant would still be illegal because it would necessitate disclosure of the documents by the Income-tax Officer (to the police officer) which is an offence under the income-tax law. This ratio of the Punjab case appears to be correct.

Right of inspection and mode of proof.–The return of income and other statements, accounts and documents on the record of an income-tax case, including the assessment or other orders passed therein, are confidential documents under this section and cannot be disclosed to a third party, but there can be no objection to the assessee's inspecting or obtaining a certified copy of any of these documents for his own purposes if he so desires *(Rama Rao* v. *Venkataramayya 1940 I.T.R. 450 (F.B.))*. After the death of an assessee his legal representative, *e.g.* his widow *(Buchibai* v. *Nagpur University 1947 I.T.R. 150)*, or, if there are more legal representatives than one, all of them *jointly (Muniyammal* v. *I.T.O. [1960] 38 I.T.R. 664)*, would have the right to inspect, and obtain certified copies of, any statement, order or other document on the record of the assessee's case. Where a statement has been made on oath before the Deputy commissioner of Taxes by a partner on behalf of the firm, certified copies of that statement may lawfully be given to the other members of the firm *(Venkatramana* v. *Varahalu 1939 I.T.R. 560. Cf. Suraj Narain* v. *Jhabhu Lal 1945 I.T.R. 13 (certified copy of assessment order on firm produced in evidence by one of the partners)*.

Documents referred to in this section may be proved by the production of the original or by secondary evidence. A Full Bench of the Madras High Court held in *Rama Rao* v. *Venkataramayya (1940 I.T.R. 450)* that statements on oath, accounts, orders passed by the Income-tax authorities and *all other documents properly on the record* of proceedings under this Act (Ordinance) are public documents within the meaning of that expression in s. 74 of the Evidence Act and certified copies thereof are admissible in evidence under s. 65 of the Evidence Act *(See also Venkatramana* v. *Varahalu 1939 I.T.R. 560 and I.T.O.* v. *Golla Narayanamma [1958] 34 I.T.R. 212).* The same view has been taken by the Nagpur *(Buchibai* v. *Nagpur University 1947 I.T.R. 150)* and Andhra Pradesh *(Semakurti Somanna* v. *Vankadari Subbarao [1958] 33 I.T.R. 116)* High Courts. The Allahabad High Court has also held that an assessment order is a public document and a certified copy of it is admissible in evidence *(Suraj Narain* v. *Jhabhu Lal 1945 I.T.R. 13).* Even a return of income filed by an assessee under s. 75 or 77 or any document drawn up by or under the directions of the assessee and filed with the Deputy Commissioner of Taxes, *e.g.* a statement of the assessee's profit and loss account, is a public document and a certified copy of it may be produced in evidence *(Rama Rao* v. *Venkataramayya 1940 I.T.R. 450 (F.B.)).*

Suit or other proceeding related to taxation.–Sub. sec. (3)(e).– The words of this clause, "any suit or proceeding ... which relates to any matter arising out of any proceeding under this Ordinance" are not confined to a proceeding arising directly out of the Ordinance but cover any suit or proceeding which pertains to a proceeding under this Ordinance and which is not directly provided for by this Ordinance itself –*(Per Krishnaswami Nayudu, J., Union of India* v. *Kanakrathnam & Bros. [1955] 27 I.T.R. 496, 501-2).* Thus a suit by the Government under s. 53 of the Transfer of Property Act on behalf of the general body of creditors against an assessee in default, for setting aside a sale as having been made in fraud of creditors, was held to be covered by this clause and the bar against production of documents laid down in sub-s.(1) was held not to apply–*(Union of India* v. *Kanakarathnam & Bros [1955] 27 I.T.R. 496).* It was further held in that case that even apart from this clause, the bar contained in sub-s.(1) did not apply to such a suit.

Appropriate authority–Sub-sec. (3)(n).–The expression "appropriate authority" in cl. (n) of sub-s (3) includes a Civil Court or a Collector, called upon to determine judicially whether a person has or has not been assessed to income-tax in a given year–*(Venkata Seshavatharam* v. *Venkata Rangayya 1946 I.T.R. 722).* Thus the Court was held to have the power to call upon the Income-tax Department to disclose the particulars necessary for determining the issue whether a person had been disqualified from claiming the status of an agriculturist under the Madras Agriculturists' Relief Act, 1938, by reason of his having been assessed to income-tax during a certain period–*(Venkata Seshavatharam* v. *Venkata Rangayya 1946 I.T.R. 722).* It is clear that this clause does not relate to the amount of tax levied but only to the factum of assessment–*(Basanti* v. *Khalsa Nirbhai Transport Co. Ltd. [195] 33 I.T.R. 255).*

CHAPTER XXI
OFFENCES AND PROSECUTION

Sec. 164: Punishment for non-compliance of certain obligations.–A person is guilty of an offence punishable with imprisonment for a term which may extend to one year, or with fine, or with both, if he, without reasonable cause, –

(a) fails to deduct [or collect] and pay any tax as required under the provisions of Chapter VII except advance payment of tax or fails to deduct and pay tax as required under section 143(2);

(b) fails to produce, or cause to be produced, on or before the date mentioned in any notice under Chapter VIII, or under section 83, such accounts, documents or statements as are referred to in such notice;

(c) fails to furnish, in due time, the return of income which he is required to furnish under section 75, or by notice given under section 77 or 93;

(d) refuses to permit inspection or to allow copies to be taken in accordance with the provisions of section 114;

(e) fails to afford necessary facilities or to furnish the required information to an income tax authority exercising powers under section 115; or

(f) refuses to permit or in any manner obstructs the exercise of powers under section 117 by an income tax authority.

Failure to deduct or collect tax, to produce account to furnish returns or statements, allow inspection or access to premises to furnish the required information.–Sec. 164: Failure of a person without reasonable cause to comply with the requirements of this section is punishable as an office under this section. Although failure to furnish a return in response to an individual notice under section 77 is punishable as an offence under cl. (c) of this section, but failure to furnish a return under section 75 should not be as he is penalised under section 124.

Sec. 165: Punishment for false statement in [verification, etc.] –A person is guilty of an offence punishable with imprisonment for a term which may extend to three years, [but shall not be less than three months,] or with fine, or with both, if he–

(a) makes a statement in any verification, etc. in any return or any other document furnished under any provisions of this Ordinance which is false.

(b) knowingly and willfully aids, abets, assists, incites or includes another person to make or deliver a false return, account, statement, certificate or declaration under this Ordinance, or himself knowingly and willfully makes or delivers such false return, account, statement, certificate or declaration on behalf of another person;

(c) signs and issues any certificate mentioned in the first or second proviso to section 82 which he either knows or believes to be false or does not believe to be true.

(d) refuses to furnish such information as may be necessary for the purpose of survey under section. 115.

False statement in declaration.–Penalty and prosecution. – Sec. 165: A fine which the Magistrate has jurisdiction to impose under ss. 164 to 168 should be distinguished from a penalty which may be imposed by the Income-tax authorities under s. 137 and ss. 123 to 129. Sec. 28 of the 1922 Act, which corresponded to the present s. 128, expressly provided that no prosecution for an offence should be instituted under that Act in respect of the same facts on which a penalty had been imposed. But there is no corresponding provision in the present Ordinance, and consequently a penalty may be imposed on an assessee and a prosecution launched against him, in respect of the same default.

Making a false return.–If the assessee conceals a part of his income when submitting a duly verified return, whether under s. 75 or in response to an individual notice under s. 77, it would constitute an offence under this section. But if the return is incomplete and the assessee openly and expressly states that the return is incomplete, it would not amount to the commission of an offence *(Champalal Girdharlal* v. *Emperor 1933 I.T.R. 384)*. When the assessee verifies and submits a false return, an offence under this section is committed, and the fact that subsequently the assessee files a revised return of his true income under s. 78 will not condone the offence, though it may be regarded as a mitigating circumstance *(Ganga Sagar* v. *Emperor 4 I.T.C. 97)*.

If a person who makes a statement in a verification mentioned in sec. 22(2) of I.T. Act which is false and which he neither knows or believes to be false or does not believe to be true commits an offence under section 177 of the penal code, read with section 52 of I.T. Act, as soon as the statement is made and a subsequent rectification of the statement in a revised return filed under sec. 22(3), I.T. Act, cannot make it any the less offence, but it can be considered as an extenuating circumstance in awarding sentence. ... Persons who pay tax were likely to shirk

making true disclosure and if they did go wrong, they were to be treated with more or less leniency.

Where an assessee deliberately conceals a part of his income, he would be liable to a prosecution under this section regardless of the fact that in the circumstances of the particular case the assessment would have been the same if the assessee had disclosed his true income *(See Att. Gen.* v. *Lloyds Bank Ltd. 26 T.C. 100)*. In such a case no penalty can be imposed under s. 128, for under that section the penalty is not to exceed two and a half times the amount of *tax avoided* as a result of the concealment.

If an agent having authority to make a return on behalf of his principal deliberately makes a fraudulent return, he is liable to be prosecuted under this section *(Inspecting Asst. Comr.* v. *Chotabhai Javerbhai 1941 I.T.R. 604)*. But in the absence of any evidence that the principal knew that his agent was making a fraudulent return, the principal cannot be convicted *(Ibid)*.

Prosecution under the Penal Code.–The Deputy Commissioner of Taxes and the other Income-tax authorities referred to in s. 3 of the Ordinance are "public servants" within the meaning of the Penal Code. Further, s. 122 expressly enacts that proceedings under this section must be deemed to be "judicial proceedings" as are vested in a Court under the ode of Civil procedure. The result is that for an offence committed in relation to income-tax proceedings, the assessee may, apart from the provisions of this Chapter, be tried and convicted under the Penal Code *(Patel* v. *Emperor 1933 I.T.R. 363, Hazari Lal* v. *Emperor 1937 I.T.R. 610 and Halkhori Ram* v. *King Emperor 1941 I.T.R. 209)*.

But once an accused is acquitted of an offence under this section, he cannot be tried again in respect of the same offence and on the same facts under any other provision of law *(See Halkhori Ram* v. *King Emperor 1941 I.T.R. 209)*. However, if the papers are merely returned by the Magistrate to the Income-tax authorities at their request to enable them to re-present the complaint with all the relevant documents, that would not amount to a withdrawal of the complaint or an acquittal of the accused, and the trial of the accused upon the re-presentation of the complaint would be valid *(Emperor* v. *Kashi Prasad I.T.R. 450)*.

Special judge.–Only a special judge has jurisdiction to try and convict a person of an offence under this Ordinance (s. 171).

Jurisdiction.–Where a false verification in a return is made by the assessee at one place and the return is received by the Deputy Commissioner of Taxes in another place, the trial for the offence should be by the Court having jurisdiction over the place where the verification was made and not by the Court having jurisdiction over the place where the verification was received *(In re Mohideen Pakkiri Marakkayar 1 I.T.C. 193)*.

Severity of sentence.–"The maximum sentence whether of fine or of imprisonment, provided for by law, represents the sentence to be inflicted in extreme cases. Because a man may easily pay a fine is no ground for ordering him to pay the

maximum fine fixed by law, if the nature of the offence committed by him is not of the most serious character, having regard to the description of the offence itself" *(Ganga Sagar* v. *Emperor 4 I.T.C. 97, 102)*. Where an advocate concealed a part of his income, the Rangoon High Court held that an exemplary and deterrent sentence was called for and inflicted a sentence of one month's imprisonment in addition to the fine imposed by the lower Court *(Patel* v. *Emperor 1933 I.T.R. 363)*.

Abetment of false return, etc.–cl.(b): The 1922 Act did not contain a corresponding provision. This section makes it an offence to abet or induce another person to make and deliver an account, statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true. The section is wide enough to cover professional men who act as abettors. The Chartered Accountant auditing the accounts or the company which submit return under section 82 signs and issues a certificate as to the corrections of the accounts shall be equally liable for an offence under cl.(c) of this section. refusal to furnish any information as may be necessary for survey work under section 115 is also an offence under cl.(d) of this section.

Sec. 166: Punishment for concealment of income, etc.–A person is guilty of an offence punishable with imprisonment which may extend to five years, [but shall not be less than three months], or with fine, or with both, if he conceals the particulars, or deliberately furnishes inaccurate particulars, of his income.

Punishment for concealment of income. –Sec. 166: Provision for imposing penalty has been made under section 128 for concealment of particulars of income or for furnishing inaccurate particulars of such income. Provision has also been made for penalty under that section for understatement of the value of any immovable property. This section makes provision for the offence punishable with imprisonment in a case where a person is guilty for concealment. So a person making concealment of income is being penalised under section 128 by the Income-tax authorities and at the same time is being prosecuted for the same offence under this section.

Sec. 167: Punishment for disposal of property to prevent attachment.–The owner of any property, or a person acting on his behalf or claiming under him, is guilty of an offence punishable with imprisonment for a term which may extend to five years, or with fine, or with both, if he sells, mortgages, charges, leases or otherwise so deals with the property after the receipt of a notice from the Tax Recovery Officer as to prevent its attachment by that Officer.

Transfer of property to defraud revenue. –Sec. 167: This section provides that if the owner of the property transfers his property by sale, mortgage, charge, lease or otherwise with the intention to defraud revenue during the pendency of any recovery proceeding under this Ordinance against a claim in respect of any tax or any other sum payable by him he will be guilty of an offence punishable with

imprisonment or with fine under this section if such transfer is made after the receipt of notice from the Tax recovery Officer so as to prevent attachment. Bonafide transfer without notice is protected against the operation of this section.

Sec. 168: Punishment for disclosure of protected information.– A public servant, or any person assisting, or engaged, by any person acting in the execution of this Ordinance, is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine, if he discloses any particulars or information in contravention of the provisions of section 163.

Disclosure of protected information.–Sec. 168: Cl.(b) of sub-section (3) of section 163 imposes a bar against disclosure of protected information which is considered as confidential under that section. If a public servant employed in the execution of this Ordinance discloses any matter which is declared by section 164 to be confidential, he is liable to prosecution under this section with the previous approval of the Board, and is punishable with imprisonment which may extend to six months or with fine.

Sec. 169: Sanction for prosecution.–(1) No prosecution for an offence punishable under any provisions of this Chapter shall be instituted except with the previous sanction of the Board.

Prosecution must be at the instance of the Board.–Sec. 169: The machinery of prosecution under ss. 164 to 168 can be set in motion only by the Board. Under the 1922 Act prosecution had to be at the instance of the Inspecting Assistant commissioner. If the prosecution is without the sanction of the Board, the conviction would be illegal. Where the Board, holding that an assessee had made a return containing false entries, gave sanction for prosecution for an offence under s. 165 and the accused was found not guilty under s. 165 but guilty of an offence under s. 164(c) (failure to furnish a return in time), and was convicted of an offence under s. 164(c), it was held in revision that an offence under s. 164(c) was of a different nature from one under s. 165, and as there was no sanction for prosecution for an offence under s. 164(c) and, further, as the accused had not been called upon to meet a charge under s. 164(c), the conviction was illegal *(Champalal Girdharlal* v. *Emperor 1933 I.T.R. 384)*.

Sec. 170: Power to compound offences.–The Commissioner may, either before or after the institution of any proceedings or prosecution for an offence punishable under this Chapter, compound such offence.

Power to compound offences. – Sec. 170: This section gives the Commissioner the right to compound *any* offence under s. 164 to 168, either *before or after* the institution of proceedings. The sanction of the Court is in no case necessary for such compounding. The provisions for compounding are not intended to confer on

the Department the power to obtain as much money as possible by holding out a threat of prosecution *(Ganga Sagar* v. *Emperor 4 I.T.C. 97)*.

The section does not say that the offence can be compounded only if it is proved to have been actually committed. If there is a proceeding on a charge under secs. 164 to 168, it would come within the purview of s. 169 and a compounding of the offence would be quite within the section; and the assessee cannot claim a refund of the composition fee on the ground that he had really committed no offence *(Shamrao Deshmukh* v. *Dominion of India [1955] 27 I.T.R. 30 (S.C. of India))*.

Sec. 171: Trial by Special Judge.–(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, an offence punishable under this Chapter, other than an offence under section 168, shall be tried by a Special Judge appointed under the Criminal Law Amendment Act, 1958 (XL of 1958), as if such offence were an offence specified in the Schedule to that Act.

(2) A Special Judge shall take cognizance of, and have jurisdiction to try, an offence triable by him under sub-section (1) only upon a complaint in writing made, after obtaining the sanction under 169, by the Deputy Commissioner of Taxes–

(a) who is competent to make assessment under this Ordinance in the case to which the offence alleged to have been committed relates, and

(b) whose office is situated within the territorial limits of the jurisdiction of the Special Judge.

Trial of offence to be made by special judge. –Sec. 171: Provisions have been made for trial of offences committed under section 164 (punishment for non-compliance of certain obligations); section 165 (punishment for false statement in verification etc.); section 166 (punishment for concealment of income etc.) and section 167 (punishment for disposal of property to prevent attachment) by a Special Judge appointed by the Criminal law Amendment Act, 1958 as if these offences were offences specified in the Schedule to the Act. He shall take cognizance of, and have jurisdiction to try, an offence triable by him under sub-section (1) of this section only upon a complaint in writing made, after obtaining the sanction of the Board under section 169, by the Deputy commissioner of Taxes competent to make the assessment if his office is situated within the jurisdiction of the Special Judge.

CHAPTER XXII
MISCELLANEOUS

Sec. 172: Relief when salary, etc. is paid in arrear or advance.– Where the income of an assessee is assessable at a rate higher than that at which it would otherwise have been assessed by reason of–

(a) any portion of his salary being paid in arrears or in advance, or
(b) his having received in any one financial year salary for more than twelve months, or
(c) his having received a payment which is a profit in lieu of salary, or
(d) his having received in arrears in one income year any portion of his income from interest on securities relatable to more income years than one;

the Deputy Commissioner of Taxes may, on an application made to him in this behalf, determine the tax payable as if the salary, payment or interest had been received by the assessee during the income year or years to which it relates and may refund the amount of tax, if any paid in excess of the tax so determined.

Relief in respect of salaries and interest on securities.–Sec. 172: Under section 21 salaries are taxable in the year in which they are due or are paid. Where salary is paid in arrears or in advance, or where a retirement benefit or salary for more than twelve months is received in any one financial year, the income for that year may be liable to assessment at a rate higher than that at which it would otherwise have been assessed. This section authorises the Deputy Commissioner of Taxes on an application to him, to grant appropriate relief for income-tax in such cases *(See In re Bhagwati Shankar 1944 I.T.R. 193)*. In this case commission earned in earlier year but received in later year was added to salary income in that year and as a result the assessee was assessed at a higher rate of tax and he applied for relief under sec. 60(2) of I.T. Act (corresponding to section 172 of I.T. Ordinance, 1984). Held, the assessee could seek relief under this section. Likewise under cl. (d), to which there was no corresponding provision in the 1922 Act, the Deputy Commissioner of Taxes may grant relief against the hardship created in cases where interest on securities relatable to more income years is received in one income year. In both the cases the Deputy Commissioner of Taxes may determine the tax payable as if the salary or interest has been received by the assessee during the income year or years to which they relate. He may refund the excess amount of tax so determined and paid by the assessee.

Sec. 173: Correction of errors.–(1) Any income tax authority or the Appellate Tribunal may, by order in writing, amend any order passed by it so as to correct any error apparent from the record either of its won motion or on the error having been brought to its notice by the assessee or any other income tax authority and all the provisions of this Ordinance as may be applicable shall have effect accordingly.

(2) No amendment under sub-section (1) which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the

liability of the assessee shall be made unless the parties affected thereby having been given a reasonable opportunity of being heard.

(3) Where any such error as is referred to in sub-section (1) is brought to the notice of the authority concerned by the assessee and no amendment is made by such authority within the financial year next following the date in which the error is brought to its notice, the amendment under that sub-section shall be deemed to have been made so as to correct the error and all the provisions of this Ordinance shall have effect accordingly.

(4) No amendment under sub-section (1) shall be made after the expiration of four years from the date of the order sought to be amended.

(5) Where in respect of any completed assessment of a partner in a firm it is found on the assessment of the firm or on any reduction or enhancement made in the income of the firm under sections 120, 121, 156, 159, 161 or 162 that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner, or, if included, is not correct, the inclusion of the share in the assessment or the correction thereof, as the case may be, shall be deemed to be correction of an error apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply thereto accordingly, the period of four years referred to in sub-section (4) being computed from the date of the final order passed in the case of the firm.

(6) Where as a result of proceedings initiated under section 93, a firm or an association of persons is assessed, and the Deputy Commissioner of Taxes concerned is of opinion that it is necessary to compute the total income of a partner in the firm or a member of the association of persons, as the case may be, the Deputy Commissioner of Taxes may proceed to compute the total income and determine the sum payable on the basis of such computation as if the computation is a correction of an error apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply accordingly, the period of four years specified in sub-section (4) being reckoned from the date of the final order passed in the case of the firm or association of persons, as the case may be.

(7) Subject to the provisions of sub-section (3) where an amendment is made under this section, an order shall be passed in writing by the income tax authority concerned or the Appellate Tribunal, as the case may be.

Correction of errors.–Sec. 173: Scope of the section: This section has limited application. It enables correction to be made, of any error apparent from the record, by any income-tax authority or the appellate Tribunal, either on their own motion, or when such an error is brought to their notice by a party to the proceedings. In the case of *Sidharamappa Andanappa Monir* v. *C.I.T. Bombay [1952] 21 I.T.R. 333* it was held that the power of the Appellate Tribunal under section 35 of I.T. Act to rectify the mistake on its own motion does not exclude its power to rectify the same mistake on the application of a party appearing before it. The power to rectify on its own motion is a larger power than the power to rectify on the application of a party. The power is not confined to a mere rectification of a mistake which in patent on the record. After the mistake is corrected it has the power to all consequential orders.

The only authority which can rectify an order is the authority which passed the order, and not any higher or lower authority *(Abdul Rahiman Sait* v. *I.T.O. [1958] 33 I.T.R. 597)*. However, the incumbent of the office may change, and rectification may be made by the successor *(Sushil Chandra Ghose* v. *I.T.O. [1959] 35 I.T.R. 379, 386)*. An order may be held valid as amounting to rectification under this section even though the authority passing the order may not purport to act under this section at all *(C.I.T.* v. *Sheolal Ramlal [1958] 33 I.T.R. 47)*.

Even after an appeal from an order has been preferred and decided, a mistake in that part of the order which was not the subject-matter of the appeal and was left untouched by the appellate authority, can be rectified *(Central Indian Ins. Co. Ltd.* v. *I.T.O. [1963] 47 I.T.R. 895)*.

Error apparent from record. Sub-sec. (1): In order to attract the application of this section, it must be a case of an error, and the error must be *apparent from the record (Thrikamji Jiwan Das* v. *C.I.T. 1 I.T.C. 406 (assessee deliberately misguided the Department and afterwards applied under this section for rectification of the "mistake"; held, this section had no application))*. A clerical or arithmetical mistake amounts to an error apparent from the record *(Jessa Ram* v. *C.I.T. 2 I.T.C. 342)*. If in making an assessment or a demand for tax the Deputy Commissioner of Taxes overlooks the fact that a particular date does not fall in the relevant accounting year *(Sidhramappa Andannappa* v. *C.I.T. [1962] 21 I.T.R. 333)*, that would be an error apparent from the record. A glaring and obvious mistake of law can be corrected under this section *(Venkatachalam* v. *Bombay Dyeing & Mfg. Co. Ltd. [1958] 34 I.T.R. 143 150 (S.C. of India))*. The facts of the case were that "the Income-tax Officer assessed the respondent company to tax for the assessment year 1952-53 by his assessment order made on October 9, 1952 in which he gave credit for Rs. 50063 being interest on tax paid in advance under section 18A(5) of I.T. Act, 1922. An amendment was made in 1953 giving retrospective effect by which an assessee was entitled to interest not on the whole of the tax paid in advance but only on the difference between the tax so paid and the amount of the tax determined on regular assessment. Under the amending section which was deemed to have come into force on April 1, 1952 the respondent was entitled to a sum of Rs. 21,157 as interest. The Income-tax Officer thereafter exercised his power under section 35 of I.T. Act and rectified the mistake in the order of assessment and demanded payment of the sum of Rs. 20,446. On an application of the respondent the High Court issued a wri

of prohibition against the respondent on the ground that there was no mistake apparent from the record that the order of assessment was valid judged in the light of the law as it stood on the date of the order. On appeal the Supreme Court held (reversing the judgment of the High Court) that for all purposes it must be deemed to have come into force on April 1, 1952, consequently the assessment order was inconsistent which can be rectified by the Income-tax Officer. And as such the levy of tax under a statutory provision which is subsequently held by the Supreme Court to be inoperative and ineffective *(Walchand Nagar Industries Ltd.* v. *Gaitonde [1962] 44 I.T.R. 260)*, or overlooking a mandatory provision of law which leaves no option or discretion to the taxing authority, *e.g.* omission to charge surcharge or interest *(Venkatachalam* v. *Bombay Dyeing & Mfg. Co. Ltd. [1958] 34 I.T.R. 143, 150 (S.C. of India))*, is a mistake apparent from the record. If, on the other hand, the law gives the taxing authority a discretion to impose or not to impose a liability, e.g. for payment of interest, action under this section cannot be taken *(Shantilal Rawji* v. *Nair [1958] 34 I.T.R. 439)*. There is nothing in the language of this section to suggest that the error contemplated by the section must necessarily be an error of fact; it can be an error of law. "It is incorrect to hold that under section 35 of I.T. Act the jurisdiction of the I.T.O. is discretionary ... If a statute invests a public officer with authority to do an act in a specified set of circumstances it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise his authority are shown to exist".

"Where the I.T.O. applied the provisions of section 16(3)(a)(ii) of I.T. Act in the assessment of H.U.F. and declined to rectify the error on application under section 35 it was held that writs were to issue directing the I.T.O. to make the aforesaid rectification"–*L. Hirday Narain* v. *I.T.O. [1970] S.C. of India 78 I.T.R. 26)*. A decision on a debatable point of law or failure to apply the law to a set of facts which remain to be investigated cannot be corrected by way of rectification *(Parameswaran Pillai* v. *I.T.O. [1955] 28 I.T.R. 885)*.

If a Deputy Commissioner of Taxes not concerned with the case has been impleaded as the respondent to an appeal before the Tribunal, the mistake may be rectified by the Tribunal under this section by substituting the name of the Deputy Commissioner of Taxes really concerned *(C.I.T.* v. *Yodh Raj Bhalla [1953] 23 I.T.R. 71)*. The Deputy Commissioner of Taxes can recompute under this section the written down value of an asset and work out afresh the correct amount of depreciation allowance after checking up the previous calculations *(Maharana Mills (Pr.) Ltd.* v. *I.T.O. [1959] 36 I.T.R. 350 (S.C.))*. But the Income-tax authorities or the Tribunal cannot, under this section, revise or review their order generally *(C.I.T.* v. *Sevugan [48 I.T.R. 59 66)* or reconsider their conclusion on the facts of the case *(Sidhramappa Andannappa* v. *C.I.T. [1952] 21 I.T.R. 333)* or enhance the income in cases of simple under–assessment *(Manickavasagam Chettair* v. *I.T.O. [1958] 33 I.T.R. 482)*. However, the section would cover a case where the assessment is completed on the assessee's agreeing that the assessment might be later rectified upon certain income being found to be taken at a wrong figure *(Manickavasagam Chettiar* v. *I.T.O. [1958] 33 I.T.R. 482)*.

Needless to say, this section confers the power to correct mistakes and not to commit them. The Deputy Commissioner of Taxes cannot, under this section, merely make readjustments in the original error and perpetuate it in an altered form *(I.T.O. v. Arvind Mafatlal [1962] 45 I.T.R. 271 (S.C.))*. But if there is a mistake apparent from the record, the statutory power is not confined to merely rectifying it but extends to passing all consequential orders *(Sidhramappa Andannappa* v. *C.I.T. [1952] 21 I.T.R. 333)*.

Effect of retrospective legislation.–Rectification under this section must be of a mistake which is a mistake in the light of the law in force at the time when the order sought to be rectified was passed. If, however, subsequent legislation comes with express *retrospective* effect, what is a mistake in the light of such retrospective legislation may be rectified under this section, because, applying the well-established principle that full effect must be given to a statutory fiction and it should be carried to its logical conclusion, it is the amended law which must be held to have been in force at the time when the order sought to be rectified was passed *(Venkatachalam v. Bombay dyeing & Mfg. Co. Ltd. [1958] 34 I.T.R. 143 (S.C. of India))* (see also the facts in the earlier part under, "Mistake apparent"). Conversely, what is a mistake apparent from the record at the time of the passing of the order may cease to be so in the light of subsequent legislation brought in with retrospective effect *(Shantilal Rawji* v. *Nair [1958] 34 I.T.R. 439)*.

"... from the record".–The record consists, not merely of the assessment order, but includes all proceedings and materials on which the assessment is based *(Maharana Mills (Pr.) Ltd.* v. *I.T.O. [1959] 36 I.T.R. 350 (S.C. of India))*. But the record means the assessee's own record *(The decision in Devendra Prakash* v. *I.T.O. [1963] 47 I.T.R. 501 that minor's assessments can be rectified after exclusion of their income (by appellate authority) from their father's assessment, must be regarded as incorrect)*. In the under-mentioned cases *(I.T.O.* v. *Habibullah [1962] 44 I.T.R. 809 (S.C. of India); I.T.O.* v. *Atmala Nagaraj [1962] 46 I.T.R. 609 (S.C. of India))* it was held that the firm's assessment order does not form part of the record of its partners' personal assessments, and consequently a partner's assessment cannot be rectified under this sub-section apart from sub-section (5), if on completion of the firm's assessment it is found that the partner's share of profits has been taken at a wrong figure.

Opportunity of being heard.–Sub-sec. (2): An order of correction which enhances an assessment or reduces a refund or otherwise increases the assessee's liability, would be invalid unless the assessee is given notice and allowed a reasonable opportunity of being heard *(Chockalingam & Meyyappan* v. *C.I.T. [1963] 48 I.T.R. (S.C. of India))*. But such opportunity need not be given if the order of rectification reduces the assessment *(Vedantham Raghaviah* v. *I.T.O. [1963] 49 I.T.R. 314)*. Addition of penal interest under ss. 70 and 73 amount to enhancement of assessment *(Chockalingam & Meyyappan* v. *C.I.T. [1963] 48 I.T.R. (S.C. of India))*. The sub-section applies whenever the effect of the order is to touch the pocket of the assessee *(per Hidayatullah, J., Chockalingam & Meyyappan* v. *C.I.T. [1963] 48 I.T.R. (S.C. of India))*.

But it is not necessary to serve the assessee with a formal written notice if he is aware of the rectification proceedings and the matter is discussed with him and he is given a reasonable opportunity of being heard *(Maharana Mills (Pr.) Ltd.* v. *I.T.O. [1959] 36 I.T.R. 350 (S.C.))*. The object of the provision as to notice is that no order should be passed to the detriment of an assessee without affording him any opportunity to show cause. Where the Deputy Commissioner of Taxes recomputes the written down value and that results in reduction of the unabsorbed depreciation to be carried forward, there is an enhancement of assessment and consequently in such a case an opportunity of being heard should be given to the assessee. In any event such a case would now be covered by the words "otherwise increasing the liability of the assessee" which did not occur in the 1922 Act. Increase in a particular item of income would amount to "enhancement" even though by the same order of rectification reduction is effected in other items to give effect to an appellate order and the net result of the rectification order is reduction of the assessment as a whole *(Lal Rajeshwar Pershad* v. *I.T.O. [1959] 36 I.T.R. 492)*.

Amendments in special cases.–Sub-sec. (5) and (6): These sub-sections confer the power of amending an assessment or re-assessment in certain special cases. Sub-section (5) deals with correction in respect of any completed assessment of a partner in a firm as a result of revision and sub-section (6) deals with computation of income of a partner of a firm or a member of the association of persons as a result of re-assessment in the case of the firm or association. Such assessment or reassessment may be done, as if was a case of correction of errors within four years from the date of the final order *(Ekmbarappa* v. *I.T.O. [1963] 49 I.T.R. 692)* passed in the case of the firm or association. In such cases the benefit of the time-limits for initiation and completion of assessment or reassessment laid down in section 93 and 94 cannot be claimed.

Notice of demand.–A notice of demand is required to be served when the correction enhances the assessment or reduces a refund already made. On the other hand, if the effect of the correction is to reduce the amount of tax due under a notice of demand already issued it would not be necessary to issue a fresh notice of demand *(Municipal Board, Agra* v. *C.I.T. [1951] 19 I.T.R. 63)*.

Limitation.–Sub-sec. (4): Action under sub-s. (1) can be taken only within four years from the date of the order sought to be rectified *(Lala Rajeshwar Pershad* v. *I.T.O. [1959] 36 I.T.R. 491)*. But once the order of rectification is made within this period of limitation, the consequential order for refund or payment of tax may be made even after this period *(Velu* v. *C.I.T. [1958] 33 I.T.R. 463)*. The period of four years also applies in cases where correction is sought to be made by the Tribunal (2).

Sub-sec. (4) puts time-limit for correction of errors. It provides that if any error as is referred to in sub-section (1) is brought to the notice of the appropriate authority by the assessee and no correction is made by such authority within the financial year following the date on which the error is brought to its notice, such error shall be deemed to have been corrected by such authority under that sub-section which shall have effect on all the provisions of this Ordinance.

Appeal and reference to Court.–Like the Income-tax Act, 1922 under this Ordinance no appeal lies to the Appellate Joint /Additional Commissioner or Commissioner (Appeals), from an order of correction of errors passed by the Deputy Commissioner of Taxes under section 173. May be by an oversight of the legislature the assessee has been deprived of his right of appeal against any order passed under this section even where there has been enhancement of income of the assessee by an amendment made under this section.

Sec. 173A: Place of assessment:–(1) Where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Deputy Commissioner of Taxes of the area in which that place is situate or, where the business, profession or vocation is carried on in more places than one, by the Deputy Commissioner of Taxes of the area in which the principal place of his business, profession or vocation is situate.

(2) In all other cases, an assessee shall be assessed by the Deputy Commissioner of Taxes of the area in which he resides.

(3) Where any question arises under this section as to place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in areas within the jurisdiction of more Commissioner than one, by the Commissioners concerned, or, if they are not in agreement, by the National Board of Revenue:

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views.

(4) No person shall be entitled to call in question the jurisdiction of a Deputy Commissioner of Taxes after he has made the return of total income, or where he has not made such return, after the time allowed by the notice served on him for making such return has expired.

Place of assessment.–Sec. 173A: This section provides that within the limits of the area assigned to him the Deputy Commissioner of Taxes has jurisdiction–

Sub-sec.(1): in respect of any person carrying on a business or profession [s. (14) and (49)], if the place at which he carries it on is situated within the area, or where it is carried on at more places than one if the principal place of the business or profession is situated within the area, and

Sub-sec. (2): in respect of any other person residing within the area.

This sub-section applies only where a Deputy Commissioner of Taxes has been directed under cl. (c) of sec. 6(1) to perform his functions in respect of a specified area. It has no application to cases where the allocation of work to the Deputy Commissioner of Taxes under sec. 6(1)(c) or 6(2) in so far as is not with reference to any area but with reference to persons or classes of persons or incomes or

classes of income; or where a case is assigned to the Deputy Commissioner of Taxes by the Board or by the Commissioner in exercise of their power under sub-sec. (3) and (4) of sec. 6 to transfer a case from one Deputy Commissioner of Taxes to another –*(Teomal* v. *C.I.T. [1959] 36 I.T.R. 9 (S.C. of India)*. In such cases the Deputy Commissioner of Taxes would have jurisdiction irrespective of the question whether the assessee carries on business or resides within his jurisdiction. It is only where an assessee's case is not covered by such an order of allocation or transfer that he would come within the jurisdiction of the Deputy Commissioner of Taxes who has been directed to perform his functions with reference to the area in which the assessee resides or carries on business.

Where reassessment proceedings under s. 93 are taken, the provisions of this section apply in the same circumstances in which they apply to assessment proceedings –*(Sardar Baldev Singh* v. *C.I.T. [1960] 40 I.T.R. 605, 611 (S.C. of India). See also Kelly* v. *Rogers 19 T.C. 692 (C.A.))*.

Ordinarily, the principal place of business is the place from which the business is directed and controlled –*(Dina Nath Hemraj* v. *C.I.T. 2 I.T.C. 304, 315)*. The place where goods are manufactured or where a great deal or even the bulk of the practical business is conducted is not necessarily the principal place of business –*(Dina Nath Hemraj* v. *C.I.T. 2 I.T.C. 304, 315)*. Rule 24 requires the assessee to mention the place of his business in the return of income.

Assessment on partner.–A partner may be assessed by the Deputy Commissioner of Taxes having jurisdiction over the place where the partnership carries on its business, even if the partner takes no active part in the partnership business. This is now established by the decision of the Privy Council in *Wallace Bros. & Co. Ltd.* v. *C.I.T. (1948 I.T.R. 240, 247)* where their Lordship said, "The essence of partnership is that each of the partners is the agent of the others for the purpose of carrying on the partnership business. Failure by any one partner to take part in the management of the business does not therefore have the result that he is not carrying on business as a partner."

Calling in question the jurisdiction of the Deputy Commissioner of Taxes–Sub-section (3): No person can call in question the jurisdiction of the Deputy Commissioner of Taxes after he has made the return of his income or after the expiry of time allowed under sec. 75(3) for submission of the return which ensures that the objection is raised before the assessment is completed. Where the objection is sent by post, it must *reach* the Deputy Commissioner of Taxes within the prescribed period–*(Vishwanath Gopal Oil Mill* v. *Prashar [1957] 32 I.T.R. 344)*. The assessee may call in question the jurisdiction of the Deputy Commissioner of Taxes on any ground. For example, he may call it in question on the ground that having regard to an order of transfer of the case or an order allocating work to different Deputy Commissioners of Taxes, another Deputy Commissioner of Taxes in the same area has jurisdiction over the assessee's case, or on the ground that having regard to the assessee's place of business or residence, the Deputy Commissioner of Taxes of another area has jurisdiction over his case under sub-s. (3). Unlike this section, s. 64(3) of the 1922 Act applied only when a question arose as to whether the

assessment should be made at one place or another . and not when the question was as to which of two Deputy Commissioner of taxes functioning at the same place should make the assessment–*(Sardar Baldev Singh* v. *C.I.T. [1960] 40 I.T.R. 605, 610 (S.C. of India).*

Where the question of jurisdiction is raised by the assessee, the Deputy Commissioner of taxes, if he does not agree with the assessee is bound to refer the matter to the Commissioner for determination. If the question is one relating to areas within the jurisdiction of different Commissioners, the question would be decided by the Commissioners concerned or. if they are not in agreement, by the Board. In no case can the Deputy Commissioner of taxes decide or prejudge the question himself–*(Dina Nath Hemraj* v. *C.I.T. 2 I.T.C. 304).* If the Deputy Commissioner of Taxes does not refer the question to the Commissioner, he can be compelled by a writ of mandamus to do so. But no question can arise of making any reference to the Commissioner where the assessee's objection is time-barred under sub-s. (4)–*(Vishwanath Gopal Oil Mill* v. *Prashar [1957] 32 I.T.R. 344).* The proviso to sub-section (3) has expressly given the assessee an opportunity of representing his views before the question was decided by the Commissioner or the Board –*(See In re Kanhaiya Lal Goenka 1941 I.T.R. 25).*

Objection as to the jurisdiction of the Deputy Commissioner of Taxes must be specifically raised. Merely filing a return marked "under protest" or stating that the assessee's income was not liable to be assessed under the Ordinance, is not tantamount to raising an objection as to jurisdiction –*(Sarupchand & Hukumchand* v. *Union of India [1953] 23 I.T.R. 382).*

Concurrent jurisdiction–(See under "concurrent jurisdiction" ante under section 6(4)).

Appeal and reference.–An objection as to the jurisdiction of the Deputy Commissioner of Taxes should be raised by the assessee before the Deputy Commissioner of Taxes and before the expiry of the time allowed by the notice served on him for making return has expired (sub-sec. (4)). The objection *cannot be raised for the first time in appeal* against the assessment after the assessment has been made–*(Wallace Bros. & Co. Ltd.* v. *C.I.T. 1945 I.T.R. 39, 45 (F.C.), affirmed, 1948 I.T.R. 240 (P.C.)).*

If the question as to jurisdiction *has been raised in time before the Deputy Commissioner of Taxes* and has been decided against the assessee by the Commissioner or by the National Board of Revenue, the assessee cannot raise the objection again in an appeal before the Appellate Joint Commissioner, for s. 153(1) does not provide for an appeal on the question of jurisdiction, and secondly, the Appellate Joint Commissioner, under the scheme of the Ordinance, cannot sit in appeal over the decision of the Commissioner–*(In re Kanhaiya Lal Goenka 1941 I.T.R. 25).* In *Wallace Bros. & Co. Ltd.* v. *C.I.T. (1945 I.T.R. 39, affirmed on another point, 1948 I.T.R. 240 (P.C.))* the Federal court held that the objection as to the place of assessment could not be raised under the 1922 Act on an appeal against the assessment–*(See also Pannalal Binjraj* v. *Union of India [1957] 31 I.T.R. 565, 579-*

581 (S.C. of India)). The matter was concluded by *Teomal* v. *C.I.T. ([1959] 36 I.T.R. 9)* in which the Supreme Court of India held that objection as to the place of assessment could not be raised under the 1922 Act in an appeal before the Appellate Assistant Commissioner or the Tribunal, or on a reference to the High Court. The decision in *Teomal's* case holds good under this Ordinance. Although the observation of the Federal Court in *Wallace Bros'*, case that "the matter is more one of administrative convenience than of jurisdiction" would not apply under this Ordinance where the statute itself refers to this matter as one of jurisdiction, the question as to the jurisdiction of the Deputy Commissioner of Taxes is still left to be decided, as under the 1922 Act, by the Commissioner or by the Board and not by the appellate authorities or by the Court on a reference. But if the assessee obtains the Commissioner's or Board's decision on the question and that decision is vitiated by an error apparent on the face of the record, it can be corrected by the High Court by an appropriate writ, direction or order–*(In Rekhi* v. *I.T.O. 1950 I.T.R. 618)*.

Where an assessee objects in time to the jurisdiction of the Deputy Commissioner of Taxes to assess him, and the Deputy Commissioner of Taxes, instead of referring the question to the Commissioner for determination, *himself decides or prejudges the question* against the assessee and proceeds to make an assessment, such assessment made by him while the dispute regarding the place of assessment is still undetermined by the competent authority would be an illegality and the Court would have jurisdiction to pronounce upon the invalidity of the assessment–*(Dina Nath Hemraj* v. *C.I.T. 2 I.T.C. 304, 312-3)*. In such a case a writ would also lie against the Deputy Commissioner of Taxes to prevent him from proceeding with the assessment and to compel him to refer the question as to the place of assessment to the Commissioner for determination–*(Dayaldas Kushiram* v. *C.I.T. 1940 I.T.R. 139)*.

Sec. 174: Appearance by authorised representative.–(1) Any assessee, who is entitled or required to appear before any income tax authority or the Appellate Tribunal in connection with any proceedings under this Ordinance, may, except when required under section 122 to attend personally, appear by an authorised representative.

(2) For the purpose of this section, "authorised representative" means a person, authorised in writing by the assessee to appear on his behalf, being–

(a) a relative of the assessee who is his parent, spouse, son, daughter, brother or sister;

(b) a whole time regular employee of the assessee;

(d) a legal practitioner who is entitled to practice in a Civil Court in Bangladesh;

(e) a chartered accountant or a cost and management accountant or a member of an association of accountants recognised in this behalf by the Board; or

(f) an income tax practitioner registered as such by the Board in accordance with the rules made in this behalf and subject to such conditions as may be laid down in those rules.

(3) Notwithstanding anything contained in sub-section (1), the following persons shall not be qualified to represent an assessee under that sub-section, namely:–

(a) a person who has been dismissed from Government service;

(b) a legal practitioner, or a chartered accountant, a cost and management accountant, or other accountant mentioned in clause (e) of sub-section (2), or an income tax practitioner, who, having been found guilty of misconduct in his professional capacity–

(i) by any authority empowered to take disciplinary action against him, or

(ii) by the [Board], in connection with any income tax proceeding, and, on account of that finding, he stands disqualified from practising his profession for so long as such disqualification continues:

Provided that no person shall be disqualified under this sub-clause unless he is given a reasonable opportunity of being heard:

Provided further that any person disqualified under this sub-clause may, within one month of his disqualification, appeal to the Government to have the disqualification removed.

Provided further that no disqualification under this sub-clause shall take effect until one month from the date of such disqualification has elapsed or, when an appeal is preferred, until the disposal of the appeal.

(c) a person who has become insolvent for so long as the insolvency continues;

(d) a person who has been convicted of any offence connected with any income tax proceeding under this Ordinance unless the Commissioner, with the approval

of the Board, by order, remove his disqualification under this sub-section; and

(e) any Government servant in the Income-tax Department who has resigned or retired from such service, for a period of three years from the date of acceptance of resignation or a period of one year from the date of retirement, as the case may be.

Authorised representatives.–Sec. 174: This section permits an assessee to be represented before the Appellate Tribunal or any Income-tax authority in connection with any proceeding under this Ordinance, by an authorised representative as that term is defined in sub-s. (2) of this section. In every case the representative must be authorised by the assessee in writing. The right to appear through an authorised representative does not extend to cases where the assessee is required under s. 122 to attend personally for examination on oath or affirmation. Rule 37 of the Income-tax Rules, 1984 is relevant to this section.

The position and obligations of accountants representing assessees in proceedings under this Ordinance are similar to those of advocates representing parties in a Court of law–*(C.I.T.* v. *Dandekar [1952] 22 I.T.R. 235)*. Sub-sec. (2) defines an authorised representative as including a person who has passed any accountancy examination recognised by the Board of Revenue or has acquired such educational qualifications as the Board may prescribe. Cl. (a) of sub-rule 2 of rule 37 specifies the accountancy examination recognised by the Board, and cl. (b) prescribes the educational qualifications, for the purpose of this section. The recognition of a person as an Income-tax practitioner under the 1922 Act was considered in the under-mentioned case–*(Suraj Mall Ghattani* v. *C.I.T. [1958] 34 I.T.R. 747)*. A person who has retired after pulling in satisfactory service in the Taxes Department and has for a period of not less than nine years served in a post not inferior to that of Extra-Assistant Commissioner of Taxes or has resigned from the services of the Taxes. Department after pulling in services for not less than seven years in a post not inferior to that of an Extra-Assistant Commissioner and such resignation has been accepted by the Government sub-cl. (c) of cl. (b)(ii) of–sub-rule (2) of rule 37).

An agent who is duly authorised to represent the assessee at the hearing of a case before an Income-tax authority is not *ipso facto* authorised to obtain a copy of the authority's judgment or decision. The Department is entitled to require that any representative or agent of the assessee asking for a copy of the judgment or decision should be expressly authorised in writing by the assessee in that behalf–*(Basant Lal Ramjidas* v. *C.I.T. 5 I.T.C. 383, 388)*. The appellate Tribunal, Dhaka Bench (I.T.A. No. 06 of 1996-97 decided on 19.6.97) took the view that service of appellate order on the authorised representative of the assessee was not a valid service.

Sec. 175: Tax to be claculated to nearest taka. –In the determination of the amount of tax or of a refund payable under this Ordinance, fractions of a taka, less than fifty poisha, shall be disregarded

and fractions of a taka equal to or exceeding fifty poisha shall be regarded as one taka.

Sec. 176: Receipts to be given.–A receipt shall be given for any money paid or recovered under this Ordinance.

Sec. 177: Computation of the period of limitation.–(1) In computing the period of limitation prescribed for an appeal or application under this Ordinance, the day on which the order complained of was served, or, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining the copy of the order shall be excluded.

(2) Where the period of limitation prescribed for an appeal or application under this Ordinance expires on a day which is a closed holiday, the appeal or application may be made on the day next following such holiday.

Computation of the period of limitations.–Sec. 177: (See ante under "Exclusion of time requisite for obtaining copy of order" under sec. 161).

Sub section (2) of this section provides that where the period of limitation prescribed for an appeal or application under this Ordinance expires on a day which is a closed holiday, the appeal or application may be made on the day next following such holiday".

Sec. 178: Service of notice.–(1) A notice under this Ordinance may be served on the person therein named either by [registered], post or in the manner provided for service of a summons issued by a Court under the Code of Civil Procedure, 1908 (Act V of 1908):

[Provided that an assessment order, a tax or refund computation from and a notice of demand shall be served on the person therein named either by registered post or in the manner provided for service of a summons issued by a court under the Code of Civil Procedure, 1908 (Act V of 1908)].

(2) A notice may be addressed–

(a) in the case of a firm or a Hindu undivided family, to any member of the firm, or the manager or any adult male member of the family;

(b) in the case of a local authority or a company, to the principal officer thereof;

(c) in the case of other body or association of persons, to the principal officer or any member thereof;

(d) in a case where a firm or association of persons is dissolved, to any person who was a member of the firm or association, as the case may be, immediately before such dissolution;

(e) in a case where a business or profession is discontinued to which section 89 applies, if the business or profession discontinued was–

(i) that of an individual, to the person whose income is to be assessed;

(ii) that of a company, to the principal officer thereof; and

(iii) that of a firm or association of persons, to any person who was a partner of such firm or a member of such association, as the case may be, at the time of the discontinuance;

(f) in a case where a finding of partition has been recorded under section 90 in respect of a Hindu undivided family, to the person who was the last manager of the family or, if such person is dead, to all adult male persons who were members of the family immediately before the partition; and

(g) in any other case, not being an individual, to the person who manages or controls the affairs of the person or institution concerned.

(3) The validity of any notice or of the service of any notice shall not be called in question after the return in response to the notice has been filed or the notice has been complied with.

Explanation.–In this section, "notice" includes order or requisition made or issued under this Ordinance.

Service of notice, order or requisition.–Sec. 178: This section provides that a notice, order or requisition under this Ordinance may be served either

(i) by post, or

(ii) in any of the ways in which a summons issued by a Court can be served under the Code of Civil Procedure–*(See Rex* v. *Ismail Bhai 1 I.T.C. 192; Himat Ram Pali Ram* v. *C.I.T. 5 I.T.C. 133).*

The above two modes of service are alternative and it is the option of the Department to adopt one or the other–*(Saha* v. *C.I.T. [1955] 27 I.T.R. 231, 240)*.

Service by post.–Where service is effected by post, it should be by registered post *(See s. 27 of the General Clauses Act and sub-section (1) of this section; Emperor* v. *Ram Charan 1 I.T.C. 21; and In re Kishori Lal Makundi Lal 1941 I.T.R. 193, 199)*. Service by registered post on a firm at its principal place of business would be valid *(De Nornha & Sons* v. *C.I.T. 1950 I.T.R. 928)*.

In a Calcutta case *(C.I.T.* v. *Malchand Surana [1955] 28 I.T.R. 684)* Chakravartti, C.J., observed that the considerations by which the legal sufficiency of service by registered post has to be judged are entirely different from those which apply to service through or by a peon or a process-server. Under s. 27 of the General Clauses Act, 1897, there is a presumption of effective service if the notice was properly addressed, prepaid and posted by registered post; and the mere fact that the physical delivery of the notice was made to a person other than the addressee, who had no authority to receive the letter on the addressee's behalf, would not be sufficient to prove that there had been no proper service. It would depend on the circumstances of each case whether this presumption has been rebutted by proof of further facts, and the onus of proving such further facts is on the assessee.

If by a letter of authorisation the assessee has duly appointed his manager to receive postal communications on his behalf, a notice sent to the assessee by registered post and delivered to the manager prior to the cancellation of the authorisation would be good service even if the manager has ceased to be in the service of the assessee before the delivery of the notice *(In re Kishori Lal Makundi Lal 1941 I.T.R. 193)*.

Where the notice was sent by registered post and duly addressed to the assessee, and the postal acknowledgment was signed by an employee of the assessee, and the postal acknowledgment was signed by an employee of the assessee firm on its behalf *(De Nornha & Sons* v. *C.I.T. 1950 I.T.R. 928)*, or by the assessee's minor son who was living with his father and used to receive notices addressed to his father *(De Souza* v. *C.I.T. 6 I.T.C. 130)* the service was held to be good; but a notice served on son of a member of an association of persons and forwarded by him to his father and received by the father after the expiry of the prescribed period was held not a proper service as the notice to an association of persons had to be addressed to the principal officer thereof –*(Sri Niwas and other* v. *I.T.O. 30 I.T.R. 381)*. The Appellate Tribunal, Lahore Bench observed that the son admittedly no authority to act on behalf of the appellant or receive notices or copies of orders for him, therefore the period of limitation shall be computed from the date, the copy of the order of the A.A.C. was actually received by the appellant – I.T.A. No. 132 of 1965 decided on 11.7.68. Service of notice to the salesman is not service according to the Civil Procedure Code though the notice ultimately reached the assessee – *(1986 BTD XIV 161 (Tribunal, Dhaka Bench)*. Service by registered post on an alien who resides abroad would be valid –*(Whitney* v. *I.R. 10 T.C. 88 (H.L.); I.R.* v. *Huni 8 T.C. 466)*. If the notice duly addressed, comes back with the word "refused" endorsed thereon by the postal authorities, proper service may be presumed unless the contrary is proved by the

assessee –*(Bhagwan Radha Kishen* v. *C.I.T. [1952] 22 I.T.R. 104); Balbhadhar Mal Kuthiala* v. *C.I.T. [1957] 31 I.T.R. 930).*

Ordinarily, it is the duty of the assessee who applies for an adjournment to find out the date fixed for the adjourned hearing – *(C.I.T.* v. *Baxiram Rodmal 1934 I.T.R. 438, 441).* The reply of the Deputy Commissioner of Taxes to an application for an adjournment is not ordinarily a "notice or requisition" within the meaning of this section and may be sent to the assessee by unregistered post –*(Perianna Pillai* v. *C.I.T. 4 I.T.C. 217).*

Service otherwise than by post.–Where a notice is served otherwise than by post, e.g. through a peon or process-server, the notice need not be served personally on the assessee –*(Rex* v. *Ismail Bhai 1 I.T.C. 192).* It may be served on his accredited agent –*(Jangi Bhagat Ramawatar* v. *C.I.T. 3 I.T.C. 418; Ramanathan Chettiar* v. *C.I.T. 2 I.T.C. 474).* The Appellate Tribunal, Dhaka Bench (I..T.A. No. 825 of 1988-89 decided on 14.10.90) observed that service of notice on a person neither authorised nor an accredited agent of the assessee is not valid even if in the past that person received notices on behalf of the assessee and such notices were complied with by the assessee. Service at the assessee's business premises on an agent exercising authority in respect of income-tax matters, though not authorised in writing in that behalf, is valid service under this section –*(Tiwari & Sons* v. *C.I.T. [1962] 46 I.T.R. 236).* In the case of a recognised agent carrying on business in the name of the principal, authority to accept notices on behalf of the principal would be implied –*(Himat Ram Pali Ram* v. *C.I.T. 5 I.T.C. 133).* But if instead of service on such recognised agent an assistant in the business is served, it would not be good service and the fact that the assistant had accepted previous notices or that he was expected to hand over communications to the recognised agent would not be sufficient evidence to support a finding that the recognised agent had been duly served –*(C.I.T.* v. *Dey Bros. 1935 I.T.R. 213).* Similarly, the mere fact that a person, e.g. the accountant of a joint family, had accepted notices and appeared on behalf of the family on previous occasions, would not constitute him an agent on whom a notice or requisition could be validly served –*(C.I.T.* v. *Baxiram Rodmal 1934 I.T.R. 438).* but even if the service is not proper, in a case where the assessee by his conduct shows that he has accepted the service as valid and waived any irregularity, the service would be effective in law in the absence of any prejudice to the assessee –*(Mohammed Idress Barry & Co.* v. *C.I.T. [1957] 32 I.T.R. 180; Tiwari & Sons* v. *C.I.T. [1962] 46 I.T.R. 236).*

If the assessee is absent from his house and the notice is served on his adult son residing with him –*(Mohan Lal* v. *C.I.T. 6 I.T.C. 101),* or if after all due and reasonable diligence to effect personal service being used in vain, the notice is affixed on the door of the assessee's premises in accordance with the provisions of the Code of Civil Procedure –*(Chattanatha Karayalar* v. *I.T.O. [1960] 38 I.T.R. 325; Ramniwas Hanumanbux Somani* v. *Venkataraman [1961] 43 I.T.R. 152),* it would be good service under this section. But service by affixture would be illegal if reasonable and proper attempts are not made to find out the assessee and serve him personally –*(Gopiram Agarwalla* v. *I.T.O. [1959] 37 I.T.R. 493; C.I.T.* v. *Thayaballi Mulla Jeevaji Kapasi [1963] 47 I.T.R. 184).* Where the notice is served on the assessee's

relative or agent who is not authorised to accept service, and such relative or agent forwards the notice to the assessee, the service would be deemed to be effected on the date when the notice *reaches the assessee* –*(Niwas* v. *I.T.O. [1956] 30 I.T.R. 381)* The presentation of the notice to the assessee's accountant under the direction and in the presence of the assessee, who was himself unable to sign the acknowledgment because of illness, was held to be proper personal service –*(Kundan Lal Vedi* v. *C.I.T. [1958] 34 I.T.R. 414).*

Where a receiver is appointed for managing the assessee's estate and the assessee throughout the assessment proceedings acts by and through the receiver, service on the receiver may be proper –*(See A.L.A.R.N. Firm* v. *C.I.T. 1936 I.T.R. 97).*

Notice to firm, joint family or association.–Sub-sec.(2).–The notice or requisition may, in the case of a firm be addressed to *any* partner –*(C.I.T.* v. *Thillai Nadar 2 I.T.C. 27; Vedachala Mudaliar* v. *Rangaraju Naidu [1960] 39 I.T.R. 308)*, in the case of a Hindu undivided family to the manager or any adult member –*(Sarupchand & Hukumchand* v. *Union of India [1953] 23 I.T.R. 382, 405)*, and in the case of any other association of persons to the principal officer or any member thereof. An adult is a person who has attained the age of discretion, i.e. who has been adult though he may not have attained majority –*(Shridhar Udai Narayan* v. *C.I.T. [1962] 45 I.T.R. 577).* Whereas the corresponding provision in the 1922 Act referred to "any adult male member" of a Hindu undivided family, this section refers to "any adult member" of the family. Where the trustees of a settlement are assessed as an association of persons, the notice may be served on the managing trustee as the principal officer of the association – *(C.I.T.* v. *Ibrahimji Hakimji 1940 I.T.R. 501).* Cl. (f) of this sub-section deals with service of notice in cases where a Hindu family is disrupted and where a finding of partition has been recorded in section 90 notice may be served to the person who was the last manager of the family, or if such person is dead to all adult male members of the family immediately before the partition. In case of discontinuance of business of an individual person, notice is to be served on the individual person whose income is to be assessed, if that be the business of a company, to the principal officer, and if that business was of a firm or association or persons, to any person who was a partner of such firm or a member of such association, as the case may be, at the time of such discontinuance (Cl. (e)).

But the provisions of this sub-section are permissive and not mandatory: the word used is "may" and not "shall" –*(Ramanathan Chettiar* v. *C.I.T. 2 I.T.C. 474).* Thus if a notice is not addressed to and served upon the manager or any living adult member of the family as provided in this sub-section, the notice would not necessarily be bad. If the assessee is a Hindu undivided family residing outside the jurisdiction of the Deputy Commissioner of Taxes but carrying on business through an agent within the jurisdiction, service of a notice on the agent may be good service –*(Ibid).* Where a Hindu undivided family continued to carry on business under the names of certain members who had been dead for some years, a notice addressed to the family in such trading name and served on the karta was held to be valid –*(Sonu Lal* v. *C.I.T. 1938 I.T.R. 94).*

The section is permissive and not exhaustive.–The mode of service mentioned in this section is permissive and not exhaustive–*(Ram Khelwan Ugamlal* v. *C.I.T. 3 I.T.C. 225, 233; Tiwari & Sons* v. *C.I.T. [1962] 46 I.T.R. 236)*. In *Ram Khelwan Ugamlal* v. *C.I.T. (3 I.T.C. 225, 232-3)* an order directing an assessee firm to produce the accounts of the firm on a specified date was passed by the Deputy Commissioner of Taxes and entered in the order-sheet. The order was shown to a partner of the firm, and by way of acknowledging that he had received notice he signed his name in the margin of the order-sheet opposite the order. The partner did in fact appear on the day specified in the notice. It was held that the partner had waived, if it were necessary, a more formal notice and that the firm had been properly served.

Validity of service cannot be called in question.–Sub-sec. (3): This sub-section provides that the validity of the notice itself, even if in case on a wrong form, or service thereof cannot be called in question if in response to such notice a return is filed or such notice has been complied with by the assessee. But if the notice is an irregular or illegal one assessment made on the basis of such notice will be invalid. If the Deputy Commissioner of Taxes "issues any invalid notice and that notice has brought in a return, he cannot then shake off his own irregularity and size the return and proceed to make an assessment on it in contravention of law and to the disadvantage of the assessee. Conversely he cannot be held to be bound to proceed on such a return or entitled to treat such a return as a good return for purposes of a valid assessment"– *R.K.Das & Co.* v. *C.I.T. West Bengal [1956] 30 I.T.R. 439)*. "The principle that the validity of an assessment does not depend on the issue of a notice or a valid notice, is not applicable to a case where the issue of a notice as prescribed by law is a condition precedent to the commencement of proceedings in exercise of the jurisdiction to assess. Where the time for making an assessment in the normal way has expired or certain omissions have occurred by reason of which no assessment has taken place or an underassessment has occurred and the statute requires that in such circumstances the Income-tax Officer can assume jurisdiction and commence fresh proceedings, only upon and after giving a certain notice of a certain kind, he issues it in a valid form". Any issue of an invalid notice in such circumstances cannot make the assessment a valid one. This sub-section, it is submitted, requires redrafting to protect the basic principle of law.

Sec. 179: Certain errors not to vitiate assessment, etc.–No assessment, order, notice, warrant or other document made, issued or executed, or purporting to be made; issued or executed, under this Ordinance, shall be void or otherwise inoperative, merely for want of form, or for an error, defect or omission therein, if such want of form, error, defect or omission is not of a substantial nature prejudicially affecting the assessee.

Errors or defects not to affect assessment.–Sec. 179: This section makes provision for giving protection to the assessment made even in cases of certain errors committed or defects found in the notices or documents made in the course of assessment proceedings and even in the absence of prescribed form of notice if such

error, defect or omission is not of a substantial nature prejudicially affecting the assessee. This provision shall create some anomalies in the absence of any judicial opinion by the Higher Courts deciding what type of error or defect or omission is of a substantial nature affecting the assessee prejudicially. There was no such provision of this nature in the 1922 Income-tax Act.

Sec.–180: Proceeding against companies under liquidation.– Notwithstanding anything contained in section 171 of the Companies Act, 1913 (VII of 1913), leave of the Court shall not be required for continuing any proceeding, or commencing any proceeding, under this Ordinance against a company in respect of which a winding up order has been made or provisional liquidator appointed.

Company in liquidation.–Sec. 180: Under section 191 the liquidator or any person who was at the time of liquidation a director of the company shall be liable to make provision for payment of any tax payable by the company. But under section 121 of the Companies Act 1913 no proceeding can be taken against any company which is being wound up without the leave of the Court. Provisions have been made under this section (Sec. 180) to counteract the provision of the Companies Act which enables the income-tax authority to commence or continue any proceeding under this Ordinance without the leave of the court as will be required against a company which is being wound up or in a case where a provisional liquidator has been appointed for that company.

In the case of *Gov.-Gen. In Council* v. *Shiromoni Sugar Mills Ltd. (F.C.) 1946 14 I.T.R. 248* it was held that the issue of a notice under section 46(5A) of I.T. Act, 1922 to the official liquidator of a company under liquidation for recovery of tax without the leave of the Court will be a case of contempt of Court, so any action taken under this section contrary to that judgment may not be saved by the provisions of this section.

Sec. 181: Indemnity.–Every person deducting, retaining or paying any tax in pursuance of this Ordinance in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Sec. 182: Bar of suits and prosecution, etc.–(1) No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Ordinance.

(2) No suit, prosecution or other proceedings shall lie against any officer of the Government for anything in good faith done or intended to be done under this Ordinance.

Bar of suits in Civil Courts.–Sec. 182: This section bars two kinds of proceedings:-

(i) No suit can be brought in any civil court to set aside or modify any assessment order made under this Ordinance.

(ii) No prosecution, suit or other proceeding lies against any officer of the Government for anything in good faith done or intended to be done under this Ordinance.

Immunity of Government officers.–The latter part of this section gives immunity to Government officers not merely in respect of acts authorised by the statute but also acts done without jurisdiction but in the *bona fide* belief that they were authorised–*(Sec. of State* v. *Meyyappa Chettiar 1936 I.T.R. 341, 352).* He cannot be said to have acted in good faith if he chooses to entertain an absurd view of the law and act on it – *Jawla Prosad* v. *Varma 78 I.T.R. 352.*The expression "intended to be done" in this part of the section signifies futurity so as to preclude suits in respect of proceedings "intended" to be taken by the Deputy Commissioner of Taxes–*(Sec. of State* v. *Meyyappa Chettiar 1936 I.T.R. 341, 352).*

Good faith.–The immunity of Government officers under this section is conditional upon their having acted in good faith. If after the correct legal position is pointed out by a judgment of the Court, the officer still persists in acting contrary to that judgment, his action would not be saved by the provisions of this section–*(Gov.-Gen.-in-C.* v. *Shiromani Sugar Mills Ltd. 1946 I.T.R. 248, 265 (F.C.)).*

Bar of suit to set aside or modify an assessment. Maintainability of suit as regards *ultra vires* provision.–The effect of this section is that, even where an assessment is erroneous or wrong, no suit can be brought in any civil court to set aside or modify the assessment–*(Kamakshya Narain Singh* v. *Union of India 51 I.T.R. 596; Senairam Doongarmall* v. *State of Assam [1963] 48 I.T.R. 797).* As the Privy Council pointed out in *C.I.T.* v. *The Tribune Trust*, the bar of suits to modify or set aside any assessment harmonises with the principle that this Ordinance exhaustively defines the remedies of the tax-payer; in other words, the only remedies open to the tax-payer, whether in regard to appeal against assessment or to claim for refund, are to be found within the four corners of the Ordinance –*(See also Raleigh Investment Co. Ltd.* v. *Gov.-Gen.-in-C. 1947 I.T.R. 332, 336-7 (P.C.), and Kamakshya Narain Singh* v. *C.I.T. 1947 I.T.R. 311, 316-7 (F.C.)).* But even if the assessee has no other remedy open to him under this Ordinance, that would not entitle him to maintain a suit barred by this section–*(Sec. of State* v. *Meyyappa Chettiar 1936 I.T.R. 341).* These, principles were reaffirmed by the S.C. of India in the cases of *Kalwa* v. *Union of India 49 I.T.R. 165, 173-4; Illuri Subbayyh Chetty* v. *State of A.P. 50 I.T.R. 93* and allied cases.

This section does not bar a suit to set-aside or modify an assessment made under a provision of the Ordinance which is *ultra vires* being beyond legislative competence or in violation of fundamental rights. The Privy Council held in *Raleigh Investment Co. Ltd.* v. *Gov.-Gen.-in-C. (1947 I.T.R. 332)* that a suit for a declaration that any of the provisions of this Act (Ordinance) are *ultra vires* and the plaintiff is not liable to be assessed to tax in respect of certain income, for an injunction restraining the Department from making assessments in future years in respect of

certain income, and for repayment of the tax paid, is barred by this section, for though *in form* the relief claimed does not profess to modify or set aside the assessment, *in substance* it does and the suit must be regarded as *directed exclusively to a modification of the assessment (See also Harish Chandra* v. *Union of India [1962] 46 I.T.R. 442)*. The Supreme Court (of India) definitely dissented from this view in *Bharat Kala Bhandar Ltd.* v. *Municipal Committee, Dhamangao (59 I.T.R. 73, 92 3); Venkataram Co. Ltd.* v. *State of Madras (60 I.T.R. 112) and Dhulabhai* v. *State of Madhya Pradesh (22 I.T.C. 416)* and held that a suit challenging an assessment made or other action taken under an *ultra vires* provision and praying for refund of tax paid under a mistake of law or otherwise, is maintainable. The Supreme Court's decision rested on the grounds that (a) an *ultra vires* provision cannot be regarded as part of the Act (Ordinance) at all, and an assessment made under such a provision is not made "under this Act (Ordinance) but is wholly without jurisdiction and is not protected by this section, and (b) the question of validity or *vires* of a provision of this Act (Ordinance) can not be decided by any of the authorities created by the Act (Ordinance) and therefore cannot be the subject matter of a reference to the High Court or a subsequent appeal to the Supreme Court; (ground (b) needs reconsideration).The Supreme Court further held that even if the action is taken under a provision of the Act which is *ultra vires*, a suit will nevertheless lie if the authority "abuses its power or does not act under the Act but in violation of its provision" –Venkataram & Co. Ltd. v. State of Madras 60 I.T.R. 112, 122 (See also State of Kerala v. Ramaswami Iyer 61 I.T.R. 187, 192 (S.C. of India). Raleigh Investment is no longer a good law.

But if the suit does not directly or indirectly aim at setting aside or modifying any assessment, it would not be barred by this section *(Inderchand* v. *Sec. Of State 1941 I.T.R. 673)*. The Supreme Court of India held in *State of Tripura* v. *Prov. Of East Bengal ([1951] 19 I.T.R. 132, 142-3, 167)* that where a person has been served with a notice calling for a return of income, it is open to him to file a suit for a declaration that the provision of law under which he is sought to be assessed is *ultra vires* and void and for a perpetual injunction to restrain the taxing authority from taking any steps to assess him . The Supreme Court held, distinguishing the decision of the Privy Council in *Raleigh Investment Co. Ltd.* v. *Gov.-Gen.-in-C. (1947 I.T.R. 332)*, that such a suit is not a suit to set aside or modify an assessment, as no assessment is yet made when the suit is instituted. The position is made clearer by this section which bars a suit "to set aside or modify any assessment *order*". The word "order" did not occur in the old sec. 67.

Even if the point as to jurisdiction being barred by this section is not raised before the Court, the Court would have no jurisdiction to entertain a suit falling within this section, for jurisdiction cannot be given by consent *(Raleigh Investment Co. Ltd.* v. *Gov.-Gen.-in-C. 1947 I.T.R. 332, 334 (P.C.))*.

Though a suit by the tax-payer to set aside or modify an assessment is barred by this section, it has been held by the Allahabad High Court that a third party may file a suit against the Government for a declaration that he is entitled to certain income and properties which are treated by the Deputy Commissioner of Taxes as belonging to the assessee *(Sec. Of State* v. *Radha Swami Sat Sang 1945 I.T.R. 520)* or

may oppose an application by the revenue for payment out of money lying in court, on the ground that the assessment under which the tax is sought to be recovered is invalid–*I.T.O.* v. *Miyyh Pellai 55 I.T.R. 84.*

Writs, directions and orders under the Constitution.–The High Court Division may issue a writ of prohibition to prohibit the Income-tax authorities from acting in excess of their jurisdiction, or a writ of mandamus or an order under art. 102 of the Constitution to compel the Income-tax authorities to perform their statutory duties *(Alcock, Ashdown & Co. Ltd.* v. *Chief Revenue Authority 1 I.T.C. 221 (P.C.); Sarupchand Hukamchand & Co.* v. *Union of India [1959] 37 I.T.R. 81 (S.C.) (s. 183); Bhopal Sugar Industries Ltd.* v. *I.T.O. [1960] 40 I.T.R. 618 (S.C.) (s. 254).* Further, the High Court Division may issue a writ of certiorari to quash quasi-judicial proceedings taken by the Income-tax authorities without jurisdiction or in excess of jurisdiction - *Lala Rajeshwar Pershad* v. *I.T.O. [1959] 36 I.T.R. 492; Joti Prasad Agrwal* v. *I.T.O. [1959] 37 I.T.R. 107),* or to quash an order which is vitiated by an error apparent on the face of the record *(Dutt* v. *Anglo India Jute Mills Co. Ltd. [1958] 33 I.T.R. 866),* or is passed in violation of the principles of natural justice *(Chockalingam & Meyyappan* v. *C.I.T. [1963] 48 I.T.R. (S.C.) 34),* or the Court may issue a writ of habeas corpus to release an assessee from illegal detention by the Tax Recovery Officer.

Under art 102 of the Constitution, the High Court Division has the power to issue not only writs of certiorari, prohibition and mandamus, but also other writs, directions and orders. In other words, even if the case is one in which a High Prerogative Writ proper as known in England cannot be issued, the High Court Division has now jurisdiction to issue such directions and orders as may be necessary to meet the ends of justice *(Calcutta Discount Co. Ltd.* v. *I.T.O. [1961] 41 I.T.R. 191, 207 (S.C. of India); Emperor* v. *Jeshingbhai Ishwarlal Dhobi [1950] 52 Bom. L.R. 544),* in respect of both administrative action and judicial or quasi-judicial action *(See ante under s. 264, "Writ, direction or order ...").* Similar powers to issue writs, directions and orders are conferred on the Appellate Division under art 102(2) of the Constitution, but they are restricted to the enforcement of fundamental rights *(Suraj Mall Mohta & Co.* v. *Visvanatha Sastri [1954] 26 I.T.R. 1 (S.C. of India); Laxmanappa Jamkhandi* v. *Union of India [1954] 26 I.T.R. 754 (S.C. of India)).* The fact that an inappropriate writ has been asked for is not a ground for refusing to grant appropriate relief *(Ranganatham* v. *I.T.O. [1960] 39 I.T.R. 730, 739).* Sec. 182 of the Ordinance cannot override art 102 of the Constitution and, therefore, in appropriate cases writs, directions or orders under art. 102 may be issued even in respect of something "in good faith done or intended to be done under this Ordinance *(Sumat Parshad* v. *I.T.O. [1960] 40 I.T.R. 692).*

A writ, direction or order under art. 102 of the Constitution will not ordinarily be issued by the Court where the impugned order, not patently erroneous, is made by an authority within his jurisdiction–*(Lala Lachhman Dass Nayar, Inre. [1952] 22 I.T.R. 418).* But where the defect of jurisdiction is apparent on the face of the proceedings, a writ of prohibition or other appropriate order will be issued despite the existence of an alternative remedy, e.g. the right of appeal–*(Calcutta Discount Co.*

Ltd. v. *I.T.O. [1961] 41 I.T.R. 191, 207-8 (S.C. of India)).* Where an alternative remedy by way of statutory appeals, revisions etc. is available, the Court's extra ordinary powers under Article 102 can be invoked only when any of the exceptional circumstances enumerated below exists:–

(i) The impugned order was passed without jurisdiction;

(ii) It violated rules of natural justice;

(iii) It was based on extraneous or malafide considerations;

(iv) It disclosed an error of law apparent on the face of the record;

(v) The statutory remedy was not adequate or was onerous;

(vi) Resort to the statutory remedy would cause irrepairable injury to the petitioner;

(vii) The impugned order infringes a fundamental right of the party.

(viii) The provision of law under which the impugned order was passed is itself unconstitutional–*(Gee vee Enterprises* v. *Addl. C.I.T. (Del) 1975, 99 I.T.R. 375 at 382; Jaipur Udyog Ltd.* v. *I.T.O. (Rajas) 1985, 156, I.T.R. 377; Mancharrao Narsingrao Heble* v. *Union of India (M.P.) 1985 151 I.T.R. 304; Javra Sugar Mills Ltd.* v. *Union of India (M.P.) 1982, 134 I.T.R. 385).*

Likewise, the existence of an alternative remedy is not an absolute bar to the issue of a writ of certiorari–*(P.C. Ray & Co. (India) Pr. Ltd.* v. *Mukherjee [1959] 36 I.T.R. 365, 383-5; Joti Prasad Agarwal* v. *I.T.O. [1959] 37 I.T.R. 107);* and a writ of mandamus would not be refused merely because the assessee could have filed a suit–*(Dhanalakshmi Ammal* v. *I.T.O. [1957] 31 I.T.R. 460; New India Tannery* v. *Nigam [1956] 29 I.T.R. 54).* A writ of prohibition may be issued to restrain recovery proceedings in pursuance of an assessment order made without or in excess of jurisdiction, even if such a plea as to jurisdiction was not raised in the assessment proceedings–*(Santosha Nadar* v. *I.T.O. [1961] 42 I.T.R. 715, on review, [1962] 46 I.T.R. 411).*

Appeal to the Appellate Division from order of High Court Division under article 102 of the Constitution.–The Madras High Court has held that a petition under art. 226 of the Constitution (art. 102 of Bangladesh Constitution) seeking to restrain the Tax Recovery Officer from proceeding against the property of the petitioner under s. 138 is a 'civil proceeding", and a final order passed on such a petition would be appealable to the Appellate Division–*(Dhanalakshmi Ammal* v. *I.T.O. [1958] 34 I.T.R. 738).* But an appeal would not lie, if the petition is for setting aside an assessment order or restraining assessment proceedings, because that would not be a civil proceeding–*(I.T.O.* v. *Joti Prasad Agarwal [1962] 44 I.T.R. 574).*

Sec. 183: Ordinance to have effect pending legislative provision for charge of tax.–If, on the first day of July in any year provision has not been made by Act of Parliament for the charging of income tax for that year, this Ordinance shall nevertheless have effect until such provision is

made, as if the provision in force in the preceeding year, or the provision proposed in the bill which may then be before the Parliament, whichever is more favourable to the assessee, were actually in force.

Ordinance to have effect pending new Finance Bill.–Sec. 183: It has been noted under s. 16(1) *ante–(See under "Rates of tax fixed by the annual Finance Act")* that the Income-tax Ordinance has no operative effect except so far as it is rendered applicable for the recovery of tax imposed for a particular fiscal year by the Finance Act. To obviate the serious difficulty which may arise as a result of delay in passing the Finance Act for any year, this section provides that if on the 1st July of any year the new Finance Bill has not yet been placed on the statute book, the provision in force in the preceding year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, should apply until the new Finance Act comes into force–*(Cf. Bowles* v. *Att.-Gen. 5 T.C. 685 and Bowles* v. *Governor & Co. of the Bank of England 6 T.C. 136, 142).*

Sec. 184A: Requirement of certificate in certain cases.– Notwithstanding anything contained in this Ordinance, a certificate from the concerned Deputy Commissioner of Taxes of from any other person authorised by the Board in this behalf, containing the [tax payer's identification number] shall be required to be submitted to the concerned authority, by any person at the time of–

(a) opening a letter of credit for the purpose of import;

(aa) submitting an application for the purpose of obtaining an import registration certificate.

(b) renewal of trade licence in the area of a corporation or of a Paurashava of a divisional headquarters; and

(c) submitting tender documents for the purpose of supply of goods, execution of a contract or for rendering services;

(d) submitting an application for membership of a club registered under মূল্য সংযোজন কর আইন, ১৯৯১ (১৯৯১ সনের ২২নং আইন)।

Certificate containing tax-payer's identification number.–Sec. 184A: A tax-payer's identification number certificate to be issued by the concerned Deputy Commissioner of Taxes under section 184B on an application made by the assessee on the form as prescribed under rule 64B shall have to be submitted to the concerned authorities for the purposes as mentioned in this section.

Sec. 184B: Tax-payer's identification number.–Every assessee will be given a tax-payer's identification number in such manner as may be prescribed.

Sec. 184C: Displaying of tax payer's identification number certificate.–An assessee having income from business or profession shall obtain tax payer's identification number (TIN) certificate from the Deputy Commissioner of Taxes under whose jurisdiction he is being assessed, by the thirty first day of December, every year and display such certificate at a conspicuous place of such assessee's business premises.

CHAPTER XXIII
RULES AND REPEAL

Sec. 185: Power to make rules.–(1) The Board may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance; and any such rules may, in so far as they do not impose, or have the effect of imposing any criminal liability, by giving retrospective effect.

(2) In particular, and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely:–

(a) the ascertainment and determination of the classification of any income in respect of which the provisions of this Ordinance are not clear;

(b) the manner in which, and the procedure by which, the income and the tax payable thereon shall be determined in the case of–

(i) non-residents, and

(ii) income derived in part from agriculture and in part from business;

(c) the ascertainment and determination of any income or class of income to be included in the total income of an assessee;

(d) the determination of the value of any perquisites and benefits and of the allowances permissible under this Ordinance in respect of any head of income or total income;

(e) the procedure for the grant of exemption of income of industrial undertakings or tourist industries and any other matter connected with or incidental thereto;

(f) the manner in which, and the procedure by which, self assessment may be made;

(g) the procedure for, and any other matter connected with or incidental to, the issue of exemption certificate or tax clearance certificate under section 107;

(h) the procedure to be followed on application for refund;

(i) registration of income tax practitioners, qualifications for registration, conditions and limitations subject to which income-tax practitioners may act as authorised representative under this Ordinance, cancellation of registration or other disciplinary measures in respect of income tax practitioners;

(j) fees and other charges to be paid in respect of any services rendered or in respect of any matter for which fees and charges are payable under this Ordinance; and

(k) any other matter which is to be provided for by rules, or which is to be or may be prescribed under this Ordinance.

(3) In cases coming under sub-section (2) (b), the rules may prescribe methods by which an estimate of such income may be made, and prescribe the proportion which shall be deemed to be income classifiable under the head "Agricultural income" or "Income from business or profession", and an assessment based on such estimate or proportion, as the case may be, shall be deemed to be duly made in accordance with the provisions of this Ordinance.

(4) The power to make rules under this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication:

Provided that where previous publication of the draft of any proposed rules or of any amendment to any existing rules is made pursuant to the provisions of this sub-section, giving therewith a notice soliciting objections and suggestions to such draft within the period specified in the notice and if no objection or suggestion is received within the period specified, the previous publication of such draft shall be deemed to be the final publication of the proposed rules or amendment, as the case may be.

Power to make rules.– Sec. 185: This section authorises the Board to make rules, by notification in the official gazette, for carrying out the purposes of the Ordinance. Such rules as framed under this section may be given retrospective effect in so far as they do not put any burden of criminal liability or have the effect of creating any criminal liability.

Sub-sec. (2) enumerates some of the important matters which may be provided for by rules. (For the rules relevant to the various clauses of sub-s. (2), see Part II of Income-tax manual.

Rules have the same force as the Ordinance.–The ordinary principle of construction is that rules made under an Act have the same force as the sections of the Act *(Karimtharuvi Tea Estates Ltd.* v. *State of Kerala [1963] 48 I.T.R. (S.C. of India) 83 91; Indra Singh Trust* v. *C.I.T. [1954] 26 I.T.R. 670, 678)*. An express provision that rules had effect as if enacted in the Act was made in s. 59(5) of the 1922 Act; but it was unnecessary and has not been repeated in this section.

Rules must be interpreted in the light of the section under which they are made *(C.I.T.* v. *Central Popular Assce, Co. Ltd. 1939 I.T.R. 293, 301)*. But no exercise of the rule-making power can affect or derogate from the full operative effect of the provisions of the sections *(North British & Mercantile Ins. Co., In re, 1937 I.T.R. 349, 383-4; Behari Lal Mullick* v. *C.I.T. 2 I.T.C. 328, 336)*; any rule which purports to do so would be *ultra vires* and void–*C.I.T.* v. *Tajmahal Hotel 82 I.T.R. 44 49 (S.C. of India). Director of Inspection* v. *Pooran Mall 96 I.T.R. 390, 396 (S.C. of India)*. The rules must be within the terms of the mandate given to the rule-making authority and they must be consistent with the parent enactment.

The authorities under this Ordinance and the Court in reference proceeding can go into the question of *vires* or validity of the rules.

Sub-section (2) gives the Board discretion to decide under sub-clauses (I) and (ii) of Cl.(b) to determine the income of particular assessees like non-resident assessee and an assessee having income in part from agriculture and in part from business; and a rule made in exercise of the Board's discretion cannot be attacked as being *ultra vires* on the ground that the income of the assessee in a particular case as given in sub-Cl. (ii) could be ascertained without an unreasonable amount of trouble and expense–*(C.I.T.* v. *Indian Relief & Benefit Ins Co. Ltd. 7 I.T.R. 352)*.

Sec. 186: Repeal and Savings.–(1) The Income-tax Act, 1922 (XI of 1922) is hereby repealed.

(2) Notwithstanding the repeal, the Income tax Act, 1922 (XI of 1922), and the rules made thereunder, shall continue to apply, as if that Act had not been repealed,–

(a) to any income of, or relatable to, any period prior to the commencement of this Ordinance; and

(b) to any notice issued, or any assessment, order, application or appeal made, any proceedings commenced or any prosecution instituted, under that Act.

(3) Save as provided in sub-section (2), the repeal under sub-section (1) and enactment of this Ordinance shall, for the purposes of the General Clauses Act, 1897 (X of 1897), be deemed to be repeal and re-enactment of the Income-tax Act, 1922 (XI of 1922).

Sec. 187: Removal of difficulties.–(1) If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Government may, by notification in the official Gazette, make such provisions as it thinks fit for removing that difficulty.

(2) No notification under this section shall be issued after the thirtieth day of June, 1988.

Repeals and Savings Transitional Period.–Secs. 186 and 187: These sections deal with the transitional period when proceedings would have to be taken or continued in respect of assessment years prior to 1984-85, that is assessment years to which the 1922 Act applied. Section 186 repeals the 1922 Act but saves it for certain purposes.

Cl. (a) of sub-section (2) enacts that for the income of any person of any period or relatable to any period prior to the commencement of this Ordinance proceedings for the assessment of that person for that year may be taken and continued as if this Ordinance had not been passed. The effect of Cl. (b) of this sub-section is that where a notice has been issued or any proceedings commenced before the commencement of this Ordinance, which include assessment proceedings as well as the entire subsequent proceedings-appeal to the A.A.C. or Commissioner (Appeals), second appeal to the Tribunal, reference to the High Court Division (See *Jaiswal* v. *C.I.T. 73 I.T.R. 179)* and appeal to the Appellate Division (See *C.I.T.* v. *Bidhn Bhusan Sarcar 59 I.T.R. 590)*, as also revisional proceedings and rectification proceedings *(C.I.T.* v. *Ram Dayal Varmh 90 I.T.R. 426)* – would all be governed by the provisions of the 1922 Act as if that Act had not been repealed.

The provisions of section 187 should be taken as merely clarificatory as regards those cases mentioned in clauses (a) and (b) of this sub-section as because in such cases by reason of section 186(2)(a) and (b) all proceedings subsequent to the assessment by way of appeal etc are to be taken under the 1922 Act. In such cases, even rectification proceedings should be taken under the 1922 Act.

Power to remove difficulties.–Sec. 187: If any difficulty arises in giving effect to the provisions of this Ordinance, the Government may issue notification which may appear to be necessary or expedient, but not inconsistent with the provisions, for the purpose of removing such difficulty but no such notification shall be issued after thirtieth day of June, 1988. This section invests the Government with power to issue notifications for the purpose of removing any difficulty arising in giving effect to the provisions of this Ordinance. The existence of a difficulty is a condition precedent to the exercise of the power and would have to be established as an objective fact upon a challenge to the validity of any notification issued under this section.–*Straw Products Ltd.* v. *Union of India 98 I.T.R. 209 (S.C. of India).*

communication, any approval given shall, unless the Board otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

5. **Exemption of income of and contribution to superannuation fund or pension fund from tax.**–(1) Income derived from investments or deposits of an approved superannuation fund or pension fund and any capital gains arising from the transfer of capital assets of such fund shall be exempt from payment of tax.

(2) Any sum paid by an employer as contribution towards an approved superannuation fund or pension fund shall be deducted in computing his income, profits and gains for the purpose of assessment:

Provided that where a contribution by an employer is not an ordinary annual contribution it shall, for the purpose of this paragraph, be treated either as an expense in the income year in which the sum is paid or as an expense to be spread over such period of years as the Board thinks proper.

(3) Tax shall not be payable in respect of any sum paid by an employee by way of contribution towards an approved superannuation fund or pension fund to which the provisions relating to paragraph 6 of part B of the Sixth Schedule shall apply:

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution.

6. **Treatment of repaid contributions.**–(1) Where any contributions (including interest on contributions, if any) are repaid to an employee in any income year, the amount so repaid shall be deemed for the purposes of tax to be income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his life time but not at or in connection with the termination of his employment, tax on the amount so repaid or paid shall, except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to tax during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Government within the prescribed time and in such manner as the Board may direct.

7. **Deduction from pay of and contributions on behalf of employee to be included in the statement under section 108.**– Where an employer deducts from the salary paid to an employee or pays on his behalf any contribution to an approved superannuation fund or pension fund, he shall include all such deductions or payments in the statement which he is required to furnish under section 108.

8. **Liabilities of trustees on cessation of approval of fund.**– If a fund or a part of a fund, for any reason, ceases to be an approved superannuation fund or pension fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid–

(a) on account of returned contributions (including interest on contributions, if any); and

(b) in commutation or in lieu of annuities;

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Part.

9. **Particulars to be furnished in respect of superannuation fund or pension fund.**–The trustees of an approved superannuation fund or pension fund and any employer who contributes to an approved superannuation fund or pension fund shall, when required by notice from the Deputy Commissioner of Taxes, within twenty-one days of the date of such notice,–

(a) furnish to the Deputy Commissioner of Taxes a return containing such particulars of contributions made to the fund as the notice may require;

(b) prepare and deliver to the Deputy Commissioner of Taxes a return containing–

(i) the name and place of residence of every person in receipt of an annuity from the fund;

(ii) the amount of the annuity payable to each annuitant;

(iii) particulars of every contribution (including interest on contribution, if any) returned to the employer or to employees; and

(iv) particulars of sums paid in commutation or in lieu of annuities; and

(c) furnish to the Deputy Commissioner of Taxes a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulars as the Board may require.