



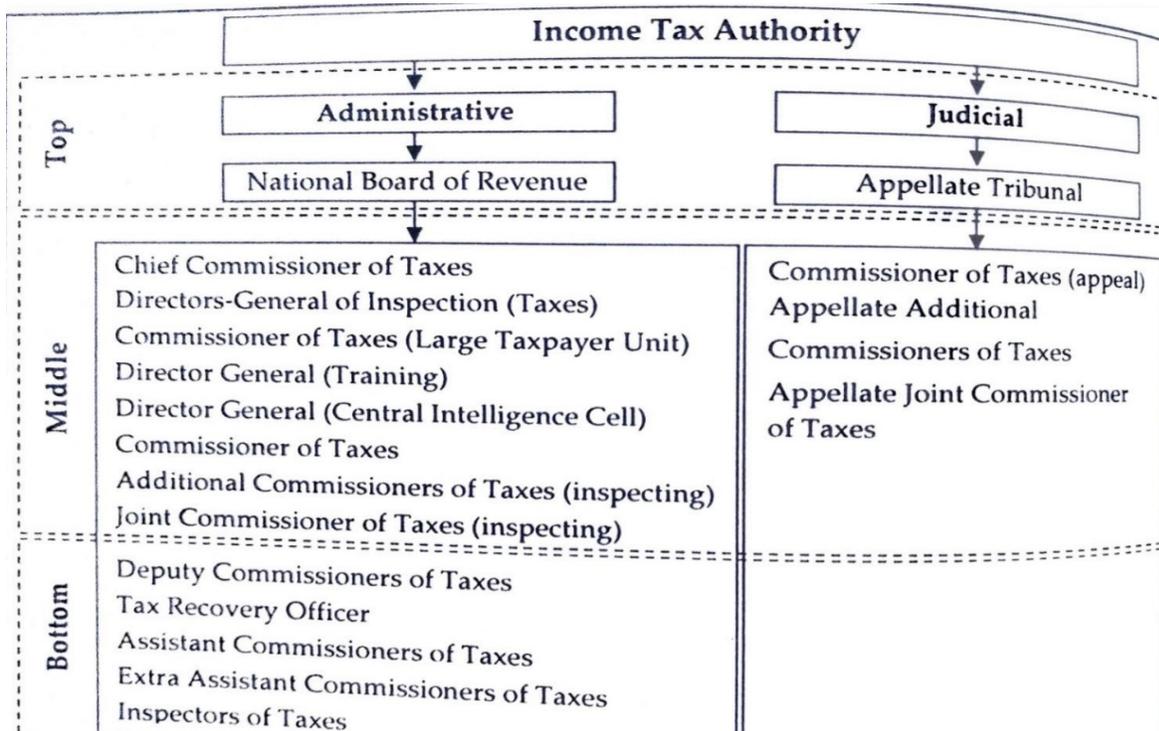
## 4. Income-TAX Authorities IN Bangladesh

Theory & Practices of Taxation (University of Chittagong )

## INCOME-TAX AUTHORITIES IN BANGLADESH

### Types of Income Tax Authorities.

Income tax authorities may be classified into two major groups depending on their functions, namely, Administrative and Judicial.



### Administrative Authorities

**1. National Board of Revenue:** National Board of Revenue (NBR) has been constituted under the National Board of Revenue Order, 1972 [U/s 2(13)] and is given the highest executive authority under the Internal Resources Division (IRD) of the Ministry of Finance. NBR is responsible for formulation and continuous re-appraisal of tax-policies and tax-laws in Bangladesh. The NBR is empowered to make necessary rules concerning income tax matters but not authorized to give any interpretation of any word used in any section of IT ordinance (judiciary function). It is a body consisting of a chairman, members, officers and secretaries. The chairman and members are appointed by the Government and work under the direct control of the Ministry of Finance.

**2. Chief Commissioner of Taxes, Director-General of Inspection (Taxes):** "Chief Commissioner of Taxes, Director-General of Inspection (Taxes) means a person appointed to be a Director-General of Inspection (Taxes) under Section 3, and except for the purpose of Section 117, includes a person appointed for the purpose of this Ordinance to be an Additional Director-General of Inspection (Taxes), a Deputy Director-General of Inspection (Taxes), or an Assistant Director-General of Inspection (Taxes) (U/s 2(25)). He is appointed by the NBR and works under the direct supervision of NBR.

**3. Commissioner of Taxes and Commissioner of Taxes (Large Taxpayer Unit):** "Commissioner' means a

person appointed to be a Commissioner of Taxes or Commissioner (Large Taxpayer Unit) under Section 3, or a person appointed to hold current charge of a Commissioner of Taxes or Commissioner (Large Taxpayer Unit) [U/s 2(19)]. They are appointed by NBR on a territorial basis in most of the time and may enjoy the supreme power of their jurisdiction. They work as per the direction of NBR and holds liable for the functioning of the department headed by them.

**4. Additional Commissioner of Taxes (ACT):** ACT is subordinate to the Commissioner within whose jurisdiction he is appointed to perform his function (U/s 5(2)).

**5. Joint Commissioner of Taxes (Inspecting):** They are appointed by the Board and work under the direct supervision of the Commissioner of Taxes within whose jurisdiction they perform their functions. Their main function is to supervise the work of the DCT tackling tax evasion under his jurisdiction. The Board may also direct them to exercise the power of the DCT.

**6. Deputy Commissioner of Taxes (DCT):** According to Section 2(23) of the ITO, 1984, "Deputy Commissioner of Taxes" means a person appointed to be a Deputy Commissioner of Taxes under Section 3, and includes a person appointed to be an Assistant Commissioner of Taxes, an Extra Assistant Commissioner of Taxes and a Tax Recovery Officer. Among the income tax authorities, the DCT holds a very important position enforcing both executive and judicial power. He is appointed by the Board and works under the supervision of the Commissioner of Taxes in respect of specific areas or persons or income.

**7. Tax Recovery Officers (TRO):** As per section 2(64), Tax Recovery Officer is appointed under section 3 of ITO - 1984 by the Board. These officers are nominated by the Commissioner of Taxes among the Deputy Commissioner of Taxes within his jurisdiction. The main responsibility of the Tax Recovery Officer is to collect arrear taxes from the defaulter assesses after receiving a certificate for recovery of the tax, forwarded by the DCT as per section 138 of the ITO - 1984.

**8. Assistant Commissioners of Taxes:** As per section 2(10), Assistant Commissioners of Taxes is appointed under section 3 of ITO 1984 by the Board. He will perform his functions as per the instructions of the authorities for the assistance of whom he has been appointed. As per section 2(23) he may also work as the DCT, if authorized by the Board.

**9. Extra Assistant Commissioners of Taxes:** As per section 2(29), Extra Assistant Commissioners of Taxes is appointed under section 3 of ITO - 1984 by the Board. He normally provides notices to the assesses on behalf of DCT, inspects tax returns and other relevant documents, recover taxes from defaulters. As per section 2(23) he may also work as the DCT, if authorized by the Board.

**10. Inspector of Taxes:** As per section 2(37), Inspector of Taxes is appointed under Section 3 of ITO - 1984 by the Board. He is appointed to assist the DCT or IJCT within whose jurisdictions they conduct their functions and duties. As per section 2(23) he may also work as the DCT, if authorized by the Board.

### **Judicial Authorities**

If an assessee is not satisfied with the decisions of the administrative authority, he can move for appeal to the appropriate judicial authority. The status, power and functions of various judicial authorities are enumerated below:

**1. Appellate Joint Commissioner of Taxes (AJCT):** According to section 2(4), "Appellate Joint Commissioner" means a person appointed to be an AJCT under section 3 and includes an Appellate Additional Commissioner of Taxes and also a person appointed to hold current charge of an Appellate

Joint Commissioner of Taxes. This authority is appointed by the Board and perform functions regarding specific judicial activities associated to person, income, case or area; assigned by the Board.

**2. Appellate Additional Commissioner of Taxes:** They are appointed by the Board and work under the direct control of the Board. They may be directed by the Board to perform their functions in respect of specified areas, persons or classes of persons or income. Although they are appointed by and work under the Board, their appellate powers and functions cannot be interfered by the Board.

**3. Commissioner of Taxes (Appeals):** According to section 2(19A), "Commissioner (Appeals)" means a person appointed to be a Commissioner of Taxes (Appeals) under section 3 and includes a person appointed to hold current charge of a Commissioner of Taxes (Appeals). They are appointed by the Board and work under the direct control of the Board. They are directed by the Board to perform their judicial functions in respect of specified areas, persons or classes of persons or income. The aggrieved assessee may appeal to him against the decisions of Appellate Joint Commissioner of Taxes. Moreover, he is also entrusted with the same powers and functions of the Appellate JCT as per sections 122, 128, 132, 153, 154, 155 and 156.

### **TAXES APPELLATE TRIBUNAL**

According to section 2(5), "Appellate Tribunal" means the Taxes Appellate Tribunal established under section 11. As per section 3, it is not a part of income tax authority. But in order to facilitate the aggrieved assessee's and the DCT with allowing them to file an appeal against the order of an Appellate Joint Commissioner or the Commissioner (Appeals), the government forms the "Taxes Appellate Tribunal" under section 11 of ITO – 1984 as a judicial body. The provisions regarding the formation, qualification of members and functioning are as follows:

**1. Formation of Taxes Appellate Tribunal:** For the purpose of exercising the functions of the Appellate Tribunal under this ordinance, the government shall establish a Taxes Appellate Tribunal consisting of a President and such other members as the Government may, from time to time, appoint. [Section-11(1)]

**2. Qualification of the members:** As per section 11(3), a person shall not be appointed as a member of the Taxes Appellate Tribunal unless he has the qualifications required.

**3. Appointment of the President:** Government shall appoint one of the members of the Appellate Tribunal to be the president of the Tribunal who is a member of the Board or holds the current charge of a member of the Board [Section 11(4)].

**4. Exercise of Power:** As per section 12, generally the powers and functions of the Appellate Tribunal (AT) shall be exercised by Benches of the AT, to be constituted by the President having not less than two members. Moreover, as per section 14, the government may direct that the powers and functions of the AT shall be exercised by any one of its members, or by two or more members jointly or severally.

**5. Decision of Bench:** As per section 13, the decision of a bench in any case or on any point shall be given in accordance with the opinion of the majority of its members. But if the members are equally divided in any point, they will refer it to the president who may refer the case to one or more other members of the Tribunal for hearing and the point shall be decided according to the majority of the members of the Appellate Tribunal who have heard it including those who first heard it.

### **ROLE OF CIVIL COURTS REGARDING INCOME TAX**

The role of civil courts regarding income tax is not very significant since no suit shall be brought in any

Civil Court to set aside or modify any assessment made under this Ordinance [Section 182(1)]. High Court Division and Supreme Court Division can only give explanation of law to any point referred to them by the assessee or the Commissioner of Taxes. On the basis of the explanation, the Tribunal can give the final verdict. An appeal can also be filed against the judgment of the High Court Division in any case which the High Court Division certifies to be a fit one for appeal to the Appellate Division (Section 161 & 162).

#### **ASSISTANCE TO INCOME TAX AUTHORITIES [SECTION - 184E]**

All officers and staff of government and semi-government organizations, law enforcement agencies, autonomous bodies, statutory bodies, financial institutions, educational institutions, private organizations, local government and non-government organizations shall assist the income tax authorities in the discharge of their functions under the ITO, 1984.

#### **CAPITAL AND REVENUE RECEIPTS AND EXPENDITURES**

The distinction between capital and revenue is important for the purpose of income tax. It is the revenue receipt and not capital, that is put to tax. The only exception being is the capital gains. In the same way, only revenue expenditure is allowed to be deducted while calculating income whereas amount spent to acquire capital assets is ignored altogether. The concept of capital and revenue should be discussed with regard to receipts, expenditure and losses.

#### **Sources of Income**

Total income of an assessee is classified and computed based on the following 7 sources (Sec 20):

**1. Salaries [Section - 21]:** According to normal meaning, salary means periodical payment made for work to an employee from an employer for the services rendered to him. According to Section 2(58) of the ITO, 1984, Salary includes:

- (a) any pay or wages;
- (b) any annuity, pension or gratuity;
- (c) any fees, commission, allowances, perquisites or profits in lieu of, or in addition to salary or wages;
- (d) any advance of salary;
- (e) any leave encashment.

**2. Income from Interest on Securities (Section-22):** An assessee invest his fund in various types of securities like both government and commercial securities. The interest received from those securities will be taxable according to the ITO, 1984. According to Section 22 of ITO, 1984, the following incomes of an assessee shall be classified and computed under the head Interest on Securities':

- (a) interest receivable by the assessee on any security of the Government or any security approved by government, and
- (b) interest receivable by him on debentures or other securities of money issued by or on behalf of a local authority or a company

**3. Income from House Property [Section - 24]:** The owner of house property, legal or beneficial, is liable to pay tax under this section. In this regard, income must come from the house property and its adjacent premises which is not used for the purpose of business or profession or for personal purpose.

**4. Agricultural Income [Section - 26]:** According to Sec 2(1) "agricultural income" means

(a) any income derived from any land in BD and used for agricultural purposes -

i) by means of agriculture; or

ii) by the performance of any process ordinarily employed by a cultivator to render the produce of such land fit to be taken to market, or

iii) by the sale of produce of the land raised by the cultivator for which only processing to render the produce marketable, has been performed; or

iv) by granting a right to any person to use the land for any period; or

(b) It also includes any income derived from any building which-

i) is occupied by the cultivator of such land where any process is carried on to render the produce of land marketable.

(ii) is on or in the immediate vicinity of such land, and

(iii) is required by the cultivator for dwelling or storehouse or other house by reason of his connection of such land.

**5. Income from Business or Profession [Section 28]:** Income from business and profession is also included in total income. According to Sec. 2(14), "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture; as per Sec. 2(49), "profession" includes a vocation;

**6. Capital Gain [Section 31]:** According to Section 31 of the ITO, 1984, tax shall be payable by an assessee under the head "Capital Gains" in respect of any profits and gains arising from the transfer of a capital asset and such profits and gains shall be deemed to be the income of the income year in which the transfer took place.

**7. Income from Other Sources [Section - 33]:** The incomes other than from salary, Interest on securities, house property, Agricultural income, business or profession and capital gains will be included under this head. In case such income does not fit in anywhere under the first six heads, it will be considered under the head "Income from Other Sources". But according to Income Tax Rule 24 it has been seen that in the "Specimen Form of Return Income under the ITO, 1984 - Part II" total 10 heads have been given. Among those the additional heads are Share of profit in a firm, Income of the spouse or minor child as applicable u/s 43(4) and foreign income.

**8. Share of profit in a firm:** If an assessee is a partner of a partnership firm, the income from the firm will be shown under this head.

**9. Income of the spouse or minor child:** According to Section 43(4) and 43(5), income of the spouse or minor child is to be included in the total income, provided that the spouse or minor child doesn't submit separate return.

**10. Foreign income:** According to Section 17(1)(a), all those incomes which accrue or arise outside Bangladesh is included under the head "Foreign Income". In case of resident, it is included in his total income and in case of non-resident it is excluded.