

**A  
COMMENTARY  
ON  
INCOME TAX LAWS**

**EXHAUSTIVE  
ANNOTATIONS AND INTERPRETATIONS  
OF THE  
INCOME TAX ORDINANCE, 1984**

**M. NURUNNABI**

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2001

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TO THE  
LOVING AND LIVING MEMORY  
OF  
MY MOTHER

## PREFACE

While writing the preface of the book, designed to assist mainly the Income-tax personnel, both officials and professionals, in their respective fields, I express firstly my heart-felt gratitude to the illustrious authors, Sir J.B. Kanga and N.A. Palkhivala, as my first book on the subject, 'Income-tax Law and Practice' (Students Edition) published in 1960 (subsequently revised and enlarged) was purely based on their supreme and unique works and at that time my book attracted the attention of most of the officers of the Income-tax Department and senior and well-read lawyers practising in the Department besides the serious students of Law Departments of different Universities as well as of Cost and Management Accounts of Bangladesh.

This humble attempt to write a book on the subject after a long gap (although I wrote some books on the subject in Bengali in the meantime, mainly for the students), was firstly thought to be an unwise decision in consideration of my age but subsequently I was prompted to write the book on two grounds - firstly, the recent edition of the commonly used book on the subject by N.A. Palkhivala and B.A. Palkhivala is out of market in Bangladesh and is also not easily available in Indian market; and secondly, the interpretations of different sections as given in their book based on the Indian Income-tax Act, though unparallel but do not match our situations wholly as laws are not the same. In my book I have tried to elucidate the principle of law following their way of discussion with case references in the perspective of our Income-tax law which includes the Income-tax Ordinance, Income-tax Rules, Circulars, Notifications and Orders as well as judicial pronouncements of the Supreme Court of Bangladesh, Appellate Tribunals' observations etc. Annotations of different sections of the Income-tax Ordinance are similarly arranged in the book as arranged by these authors as I have found the system adopted easily understandable to the readers and helpful in all respects. I also consulted books of A.C. Sampath Iyengar and Raja Naqvi, the renowned and well-known authors, to whom I am also immensely indebted. In some cases I have quoted some portions of their books just to make certain points of law more elaborate and easily construed. I also took help from the Tax Digest of A.N. Ayer and K.B. Bhatnagar and tried in some cases to quote the judgements in short to present them before the readers which may not be easily available to all the readers. Common people of our land are not aware about the income tax laws simply because it is not simple and interesting to be a point of discussion. Even it is Greek to the pressmen. So I find nobody beside me even in proof reading, correcting computer composition, preparing the contents in detail etc. I had to do most of the works alone. Although every effort has been made to avoid errors, misprints or omissions but in spite of this errors may creep in, but such errors or mistake or discrepancy, I hope, shall not be of material nature. It is suggested that to avoid any doubt the readers may kindly re-examine the facts, law and contents of the

book with original Government publications or Notifications and at the same time to inform the fact to the author.

I must acknowledge my great indebtedness to Mr. Shawkat Ali Waresi, a well-read and well-versed person, for affording me the chances for several helpful discussions, worthy suggestions and all other things I wanted from him. I am thankful to Mr. P.K. Sarkar, DCT, for his ceaseless encouragements. I heartily thank Mr. Abdul Alim, my ex-student, who took the trouble to go through the proofs and did the job very efficiently. His timely assistance was of immense value to me. My thanks are also due to my son, Dr. M. Nurul Quaiyum, Professor of Rajshahi University and to my second son, M. Nurul Ahsan, an Income-tax Consultant, who helped me directly and indirectly in the preparation of the book. I must also record my appreciation of the speedy, sincere and splendid job done whole-heartedly by Mr. Kamruzzaman, Data Processor.

All the credit goes to the merciful Almighty as only for his gracious blessings I have been able to do the work.

To improve the standard of this book any coherent and constructive suggestion is welcome. If this attempt can provide any help to Income-tax personnel I shall consider my labour amply rewarded.

Author

## INTRODUCTION

Law of Income-tax is by its nature, a very complicated subject. The main principles of law are fairly simple, but the difficulty arises in their application. The Income-tax Ordinance deals with the taxation of income without exhaustively defining what is 'income'. "Income is the dark cat in the bag of the income-tax Code." The question what is income is not determined by the way in which a sum is dealt with in the accounts or the language in which the parties describe the transaction. The Income-tax Ordinance merely sets out certain provisions as to particular kinds of receipts that should be excluded or included and as to the methods of computation of Income. As to the nature of income and capital, we have to seek guidance from judicial pronouncements which again afford scope for difference of judicial opinion and as such is not altogether a reliable guide, and in practice the commercial accountant faces baffling problem in allocating doubtful and marginal items between capital and revenue. The concepts of capital and revenue have been the subject of close analysis by economic thinkers. The following extracts from the book of Prof. Fisher will show that the concepts have been elusive and have defied analysis:

"Capital is a fund and income a flow, ... capital is wealth and income is the service of wealth ... A stock of wealth existing at an instant of time is called capital. A flow of services through a period of time is called income. From the time of Adam Smith it has been asserted by economists ... that only particular kinds of wealth could be capital, and the burning question has been, what kinds? But the failure to agree on any dividing line between wealth which is and wealth which is not capital, after a century and a half of discussion, certainly suggests the suspicion that no such line exists". In consequence "almost every year there appears some new attempts to settle the disputed conception, but unfortunately, no authoritative result has as yet followed these attempts. On the contrary, many of them only served to put more combatants in the field and furnish more matter in the dispute". There is the authority of the English Court of Appeal for the proposition that in many cases the spin of a coin would decide the question of income and capital almost as satisfactorily as an attempt to find reasons.

The Ordinance enjoins the revenue to search for income wherever it is found and the Legislation has taken vast strides in search of artificial types of income and recently it has gone so far for such work that now there has been a gross violation of the fundamental law that "tax is imposed on a person in relation to his income", since tax is now imposed on gross receipts which may result in a loss in many cases (Sec. 82C).

The law of Income-tax is not only based on the Income-tax Ordinance 1984, as amended from time to time, but it also includes Rules made thereunder

which have the same force as the section in the Ordinance unless the rule contravenes any express provision of the Ordinance, in which case the provisions of the section shall prevail. The unending competition in ingenuity between the tax-gatherer and tax evader has rendered the taxation statutes increasingly complicated. The amendments made from time to time to the Ordinance are too often framed without sufficient regard to the basic scheme upon which the statute was originally based; and the scheme of the Ordinance as it stands now is far from logical. The difficulty of understanding the law is further aggravated by the fact that for some reason inexplicable to the layman the draftsman of the fiscal statute seems to find language a very unsatisfactory medium of expression and communication.

Although provisions are there to tax capital gains, capital receipts have been brought to be charged in some sub-sections of section 19 e.g. sale proceeds of goodwill or compensation for cancellation of contract (sub-section 10); compensation for termination of agency (sub-section 12) and compensation for termination of employment in sec. 2(50). Various provisions have been made in many sub-sections of sec. 19 to tax sums, such as, any benefit for remission of trading liability (sub-sec. 11); profits on recovery of ascertained losses after the expiry of the income year (sub-sec. 15); although under the general law such amount remitted cannot be treated as income of the income year. The section (sec. 19) mainly corresponds to sec. 2A of the Income-tax Act, 1922 and was inserted in that Act during the martial law regime, so most of the provisions of the section are arbitrary and in violation of the basic principles of natural justice as these provisions superseded the general law.

Justice Holmes tried to make taxes less odious by means of felicitous definition. "Taxes", he said, "are what we pay for civilised society". He further remarked, "I like to pay taxes. With them I buy civilisation". One of the principles underlying the scheme of the statute is that tax is assessed and paid in the next succeeding year upon the profits of the year before. The tax-payer is therefore, generally liable to pay tax in the succeeding year of income. But now Chapter VII of the Ordinance, wherein sources of income from which tax is deducted at source, e.g. where the tax-payer is bound to pay tax in the year of income, has been so broadened by insertion of innumerable sections, such as, sections 50, 50A, 51, 52, 52A, 52B, 52C, 52D, 52E, 52F, 52G, 52I, 52J, 53, 53A, 53B, 53C, 53D, 53E, 53EE, 53G, 53GG, 53H, 54, 55, and 56, besides the provision for payment of tax in the year of income while the assessee is departing from Bangladesh and where he closes his business. The legislation's desire to quicken the process of tax recovery is further manifested by section 83A which contains a provision for making a self assessment on the basis of the income admitted by the assessee and it finds further expression in section 64 which provides for advance payment of tax.



It has been recognised that the tax-payer is entitled so as to arrange his affairs in such a way as not to attract the tax or to minimise his tax-liability. But the difficulty now is to find any way of arranging one's affairs as not to attract any tax or to reduce his liability to pay any tax, since devices like transferring income from any assets without transferring the assets to one's wife or children or device of bond-washing tax transaction, that is, (sec. 106) systematic sales of shares or securities cum-dividend or to arrange business with non-resident so as to reduce tax liability (sec. 102) have been neutralised by the statute and therefore, the assessee is now fighting a losing battle, the only scope to avoid or minimise tax is left with the habitual tax-evaders who are sometimes given shelter by making new legislation.

The wise have said that the problem of judicial interpretation is to hold a just middle way between excess of valour and excess of caution. But in Income-tax cases there is too often an unfortunate tendency to incline towards excess of caution. There is need now to recall the words of Sir Frederick Pollock, "Those who make no mistakes will never make any thing, and the judge who is afraid of committing himself may be called sound and safe in his own generation, but will leave no mark on the law".