



Part – III

INCOME TAX APPELLATE TRIBUNAL – AN INSIGHT

HISTORY OF TAXATION IN INDIA

In India, tax was introduced in July, 1860 initially by the Act of 1860 for a period of five years due to stress of financial difficulties consequent to the mutiny of 1857. It was then assessed by a Panchayat and the duties were charged under each component at low percentages of the income. A taxpayer feeling aggrieved by the assessment could appeal to the Collector of the district, whose order was final.

The Act of 1868 (which replaced the Act of 1860) made an improvement in the position by providing, in the first instance, for a petition of objections to the Collector, and then, for an appeal from the order of the Collector of the district to the Commissioner of Revenue of the division. The order of the Commissioner of Revenue was final. No reference was available to the High Court under these Acts. The same basic position continued under the successor Acts of 1869, 1870, 1872, 1886, 1916 and 1917. Between 1880 and 1886, there were as many as 23 tax enactments.

"Income-tax Act" as such was, for the first time, instituted by the Act No. VII of 1918. It was more elaborate than its predecessor Acts, both as regards procedural and substantive law. It

brought the High Courts into the picture in an advisory capacity. Under this Act, an appeal lay to the Commissioner against an assessment and, from the order of the Commissioner, a revision petition lay to the Chief Revenue Authority.

When in 1860, the Indian Legislative Council passed the fiscal enactment imposing the small percentage of duty "on profits arising from property, professions, trades and offices", no one could have imagined that the seed so planted would in course of time become a source of enormous revenue generation for the State exchequer. This Act lapsed in 1865 but it laid a seminal foundation for the growth of a vast, complex and specialised branch of law.

MECHANISM OF REDRESS FOR TAXPAYERS – HIATUS IN THE TAX LAW

Section 226 of the Government of India Act, 1935 specifically forbade interference of High Courts in revenue matters in exercise of their ordinary jurisdiction. The Indian Income-tax Act itself contained a prohibition in section 67 against litigation in tax matters being initiated in civil courts of the land. The perennially held judicial principle that right to file an appeal not

being an inherent right but a creature of statute being regarded as sacrosanct meant it was not surprising that in its atavistic stages, the Income-tax Acts provided no redress to a taxpayer in civil courts. {Releigh Invt. Co. case [15 ITR 332 (P.C.)], State of Tripura (19 ITR 132), Bharat Kala Bhandar Pvt. Ltd. (1966) 59 ITR 73.

In the Act of 1868, a provision was, however, inserted providing for a reference to the High Court by the Chief Revenue Authority on points of law. The subsequent two Acts of 1920 made no change in the position. In 1921, the Government of India appointed the All India Income-tax Committee which revised the designations of the officers of the Revenue department in 1921 creating a hierarchy starting with the Board of Inland Revenue at the top, then the Commissioner of Income-tax, then the Assistant Commissioner of Income-tax and then the Income-tax Officer, the Act XI of 1922, provided for an appeal from the order of the Assistant Commissioner of Income-tax to the Commissioner but only in cases involving penalty and enhancement of assessment. The scope of judicial review in tax matters was thus very limited.

Furthermore, the procedure and practice followed in the disposal of tax cases was more or less of a routine nature inasmuch as the Appellate Assistant Commissioner in a majority of the cases would decide against the taxpayer and the taxpayer would then go in revision to the Commissioner of Income-tax who also in majority of the cases decided against the taxpayer; and when an application would be made to the Commissioner for a reference to the High Court, and in about

50% of the cases, the application for reference would be refused on the ground that the question raised was a question of fact and not of law.

This perhaps gave birth to a widespread desire of the tax-payers for an appeal to an independent body on important questions of fact and law.

PROPOSED STRUCTURE OF THE TRIBUNAL IN A NASCENT STAGE

An investigation into the Indian Income-tax system was conducted by a committee consisting of Rai Bahadur J. B. Vachha, Commissioner of Income-tax, Bombay and Messrs C. W. Ayres and S. P. Chambers of the Board of Inland Revenue of the United Kingdom. The Income-tax Enquiry Report, 1936, submitted by them gave shape to the setting up of the Income Tax Appellate Tribunal. Finding the desire of taxpayers of appeal to an independent forum not unreasonable, the Enquiry Report recommended that one All India Tribunal be set up consisting of six persons chosen by the Governor-General-in-Council to hear appeals on questions either of fact or of law against decisions of the then Appellate Assistant Commissioners. They also considered that, subject to the condition that at least two members should be persons who have acted as High Court Judges for at least three years to secure adequate consideration of cases on points of law, the choice of the Governor-General-in-Council in this matter should be unfettered by statute. They, however, opined that it would be desirable to include two persons who have had wide experience in the Income-tax Department and two with accountancy or business experience. It was contemplated that there would be one Tribunal only for



the whole of India and that appropriate centres would be visited by Members of the Tribunal on circuit, depending on the volume of work. The arrangements were to be sufficiently elastic to allow the hearing of most cases in which only questions of fact were involved by single members of the Tribunal, while cases of greater importance were to be dealt with by a bench of two or more members. The Enquiry Report recommended that the decisions of the Tribunal on questions of fact were to be final, while its decisions on questions of law were to be subject to an appeal only to the Privy Council. This gives an impression that the original idea to set up the Tribunal was more or less synonymous to that of a Tribunal of the nature presently referred to in Article 323B of the Constitution of India.

SELECT COMMITTEE OF 1938 AND IMPORTANT CHANGES

In 1938, an Income-tax Amendment Bill proposing the introduction of a large number of amendments to the 1922 Act was referred to a Select Committee. These amendments did not include provisions for setting up of an appellate tribunal. The Select Committee consisted of eminent jurists, businessmen, educationists, accountants and advocates. It consisted of thirteen members, prominent amongst whom were Shri Bhulabhai Desai, Shri Cowasji Jahangir, Shri S. Satyamurthy and Mr. P. G. Grigg. The Select Committee examined the various provisions of the Income-tax Act, the powers that were exercised by the Commissioners of Income-tax, the aspirations of the taxpayers and the necessity for a judicial adjudication of the disputes. On 10th November, 1938, it submitted a report

to the Central Legislative Assembly making a historic recommendation that "*the Bill should contain provisions for the introduction of a further appellate authority of an independent nature for the hearing of the appeals from decisions of the Appellate Assistant Commissioner*". The Report said:

"We are of the opinion, that the Bill should contain provisions for the introduction of a further appellate authority of an independent nature for the hearing of appeals from the decisions of the Appellate Assistant Commissioner.

The new appellate body should consist of a Tribunal composed of not less than two Members chosen from each of two categories of a panel of some 8 or 10 members comprising legal members with qualifications such as are normally required for appointment as a district judge and technical members recruited from among persons with professional experience of accountancy. We think that when the panel is being appointed, persons discharging the functions of the Appellate Assistant Commissioners under the existing system should be eligible for appointment. We think that the Selection of Members of the panel should be made after consultation with the Public Service Commission and that members should not during their tenure of office have any other connection with the public administration. The powers to regulate procedure of the Tribunal should be vested in them or in the panels of which they are constituted

and the Chairman or President of the panel should have the necessary powers to select the Members of the Tribunal."

In view of the limited time at its disposal, the Committee did not outline the changes necessary in the Bill, to give effect to this recommendation and left it to the Government to bring forward the necessary proposal and noted that the introduction of the new appellate body might be postponed for a period not exceeding two years to avoid the possibility of "undue dislocation". A notable recommendation was made to the effect that after the Tribunal came into operation, the revisionary powers exercised by the Commissioner of Income tax should disappear but that he should have a power to direct the filing of appeals to the Tribunal, against decisions of the Appellate Assistant Commissioner. The Commissioner's power of stating a case to the High Court was substituted by a like power conferred on the Appellate Tribunal which could be moved for the making of such a reference either by the taxpayer or the Department within a prescribed period of limitation. It will be noticed here that, in this last respect, the Select Committee made a departure from the suggestion made by the Enquiry Report, where under the Appellate Tribunal was to have had the last word, save only for an appeal to the Privy Council, on questions of law.

LEGISLATIVE FABRIC FOR THE CREATION OF THE TRIBUNAL

In pursuance of these recommendations, Section 5A, was introduced in the Income-tax Act, 1922, and 25th January, 1941, was notified as the appointed date from which the section came into force.

Subject to minor variations consequent on the expansion of the Tribunal and extension of its jurisdiction the section remained unchanged in its essentials till the repeal of the Income-tax Act, 1922 with effect from 1st April, 1962. In the Income-tax Act of 1961, the constitution and functions of the Tribunal have been set out in sections 252 to 255. There is no fundamental change either in the constitution or in the functions of the Tribunal due to enactment of the new Income-tax Act. The lofty ideal which inspired its creation, namely, "*Sulabh Nyay & Satwar Nyay*" means easy and quick justice, and after the adoption of the Constitution of India by the Constituent Assembly on 26th November, 1949, the Tribunal has a constitutional duty of safeguarding the mandate of Article 265 that "No tax shall be levied or collected except by authority of law".

In pursuance of the recommendations made by the Select Committee, the legislature introduced Chapter II-A (Section 5A) in the Income-tax Act, 1922 dealing with the constitution and appointment of the Appellate Tribunal. It provided that the Tribunal shall consist of not more than ten persons, made up of an equal number of judicial and accountant members with one of the judicial members as its President. Under sub-section (3):

"A judicial member shall be a person who has exercised the powers of a district Judge or who possesses such qualifications as are normally required for appointment to the post of a District Judge; and

an accountant member shall be a person who has, for a period of not less than six years, practiced



professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932:

Provided that the Central Government may appoint as a accountant member of the Tribunal any person not possessing the qualifications required by this sub section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.”

It was provided that the Tribunal would sit in Benches consisting of not less than two members and be so constituted as to contain an equal number of judicial and accountant members or so that the number of members of one class did not exceed those of the other by more than one. Differences on which members were equally divided would be resolved by reference to a third member or members and decided on the basis of the majority view. The Tribunal would its own rules of procedure and dispose of appeals and reference applications with the assistance of the “authorised representatives” of the parties. Section 61 of the Act permitted an assessee to be represented before the Tribunal by (a) a relative of the assessee, (b) a person regularly employed by the assessee, (c) a lawyer, (d) an accountant or (e) an income tax practitioner. This last category gave continued recognition to persons who had been attending before Income-tax authorities prior to 1-4-1938 on behalf of assessee otherwise than as an employee or relative. It also gave recognition to persons who pass a

recognised accountancy examination or acquire certain prescribed educational qualifications. The Tribunal provided by its rules that the Income-tax authority, which was a party before it, could be represented by a person (usually an Income-tax Officer) duly appointed for the purpose by the Central Government by a Gazette notification or any other person acting on his behalf.

Thus, came into being a quasi-judicial institution whose members possessed accountancy as well as legal expertise needed for an effective scrutiny of accounts and financial documents and the application of the relevant law to the facts of the case. The easy accessibility of the Tribunal not only to lawyers but also to accountants and other less qualified laymen combined with the simplicity and freedom from technicalities in the rules framed by the Tribunal was calculated to provide an informal atmosphere and facilitate the smooth adjudication of tax disputes by the Tribunal.

THE BIRTH OF THE TRIBUNAL

On the historic day of 25th of January, the Tribunal was constituted in 1941. This date was notified as the appointed date on which Chapter II-A in the Indian Income-tax Act, 1922 was to come into force. In 1941 ITR, on page 1, the following words aptly marked the enthusiasm of setting up of the Tribunal:

“The New Year opens with an important event in the history of the administration of Income-tax law in India, namely, the constitution of the Income Tax Appellate Tribunal. A Tribunal consisting of a body of persons independent of the

executive, to whom appeals may be preferred from the decisions of the officers of the Department is sure to be welcomed by the public."

The Central Government in the first instance, appointed four members, on a tenure basis, on five year contracts. The members to be appointed met initially in New Delhi under the designation of special officers for a period of one month, during which the rules of the Tribunal were framed and the places of sitting decided upon. The rules were promulgated on 1st February, 1941.

Four members were appointed on 25th January, 1941. The two Judicial Members were Mr. Mohd. Munir, who was to be the President, and Shri Ram Prasad Varma. The two Accountant Members were Shri P. C. Malhotra and Shri A. L. Sahgal. On 24th February, 1941, two more persons were appointed. Shri P. N. S. Aiyar was appointed Accountant Member. Shri R. Satyamurti Aiyar, who was appointed Judicial Member, passed away soon after and was succeeded to by Shri R. Gundil.

Originally, the Members of the Tribunal were appointed on tenure basis, the contract being for a period of five years. Since 25th February, 1950, the appointment is made on a permanent basis.

The selection of the members was made by requesting the Chief Justices of the various High Courts and the Commissioners of the various provinces to send up nominations of the persons qualified to be High Court judges but who were not immediately required on the Bench of the High Court at least for a period of one year. The Chief Justices

sent up the names of the members of the Bar whom they considered eligible and similarly the Commissioners also sent up the names of the persons who, in their opinion, were eligible for appointment, having regard to their status in the profession, their income and their erudition. Nomination of Accountant members was called for from the various Commissioners, as the Commissioners were most likely to know about the chartered accountants. The Law Member and the Finance Member of the Government made the selections out of the nominations thus received. It may be here mentioned that Mr. Mohd. Munir, within two years of his appointment, was elevated to the Lahore High Court. He later migrated to Pakistan and rose to become Chief Justice of the Pakistan Supreme Court. All the three Accountant Members belonged to the accountancy profession and were enjoying lucrative practice when they were appointed.

The six members sat in three benches. Messrs. Mohd. Munir and Sahgal presided over a bench which had jurisdiction over Northern India, U.P. and Delhi. Messrs Ram Prasad Varma and P. N. S. Aiyar were members of the Calcutta Bench which had jurisdiction over Bihar, Bengal, Orissa, Assam and Madras Messrs. Malhotra and Gundil had their sittings at Bombay. The headquarters of the Tribunal was at Delhi and each bench had to do extensive travelling to do the work at several places. The Tribunal functioned under the control of the Central Board of Revenue till 30-5-1942 when its administrative control was transferred to the Legislative Department of the Government, now the Ministry of Law and Justice.



GROWTH OF THE TRIBUNAL

The Tribunal would have been born at an auspicious hour, for its growth was rapid. From the very beginning it appears, the public was very much satisfied with the work done by the Members of the Tribunal, their independence, judicial approach and fairness to both parties, the taxpayer and the department alike. The number of appeals instituted before the Tribunal rose from 1,607 in 1941-42 to 22,380 in 1963-64 and 53,980 in 1979-80. As on 1st January, 2016, there are 95,657 appeals pending before the Tribunal. There were many reasons for this progress, some of which may be attempted to be enumerated here.

The first of these was the territorial expansion of what was previously British India into the Indian Union of today. To start with, the Tribunal had jurisdiction over the provinces of British India. When partition came some of the provinces and parts of provinces were transferred to Pakistan and so excluded from its jurisdiction. Thereafter, as a result of the integration of the former princely or native states and the merger of the former French and Portuguese possessions in the Indian Union, the jurisdiction of the Tribunal now extends to the whole of the territory of India.

The second reason was the happy notion of combining two categories of technical expertise in the selection of members instead of recruiting only judicial officers to the posts. The judicial members were recruited from among senior district judges or lawyers with lucrative tax practice who distinguished themselves later by being elevated as judges of High Courts. Reference has

earlier been made to Mr. Mohd. Munir, who retired as the Chief Justice of the Pakistan Supreme Court. The next President, Shri Yahya Ali was elevated as a judge of the Madras High Court. Shri A.N. Shah, a District Judge, belonging to the Indian Civil Service became the President some time afterwards and had a long and distinguished career as the President of the Tribunal for about eleven years. Subsequently also several Presidents and judicial members of the Tribunal have been appointed as judges in various High Courts. The Accountant Members were drawn from persons with experience in the profession or in the Department A combination of these talents was able to grapple with and evolve satisfactory solutions to the various types of problems arising under the taxing enactments.

The third important reason for the Tribunal popularity was its informality and easy accessibility. To quote an eminent tax lawyer, who had intimate knowledge of the Tribunal and its functioning:

"An informal atmosphere prevails in the Tribunal and cases are allowed to be argued, not only by lawyers but by accountants, Income-tax Practitioners, relatives, officers of companies and other representatives. Secondly, the Tribunal, unlike a Civil Court, is not bound by the rules of evidence. It is permitted, in fact expected, to do substantial justice, bearing in mind (if one may adapt the historic dictum of Justice Holmes) that there is a limit to the nicety of inquiry which is possible in a tax appeal. Relevant and even material facts, which the Tribunal readily takes into account, would

be exiled from the records in the Civil Court on the ground that they do not pass the tests of the Evidences Act. The Tribunal work often involves investigation of facts embedded in accounts kept in a variety of languages and in documents which are not normally proved. In a sizeable number of cases the Tribunal is constrained to make merely rough guesses at truth. The decisions rendered by the Tribunal have, by and large been distinguished by sturdy independence and a desire to do justice."

Primarily, the Tribunal was set up to dispose of appeals arising from assessments under the Income-tax Act. The vast expansion of the work before the Tribunal was attributable to the gigantic economic development of the country, particularly after the Second World War, which gave scope for enormous private profits. This prosperity brought in its wake various new enactments and an appellate forum was naturally needed to dispose of the appeals arising out of assessments made under these various Acts as well. The imposition of Excess Profits Tax and the Business Profits Tax during the War gave rise to a very large number of appeals. In 1957-58, the legislature enacted a triple tax legislation, bringing to charge the net wealth of, as well as the gifts made and the expenditure incurred by, a taxpayer. The Wealth tax, Gift tax and the Expenditure tax Acts took advantage of the appellate machinery already functioning under the Income-tax Act. Earlier, the Estate Duty Act had come on the Statute Book in 1953. It is worth noting that, in the initial stages of the administration of the Estate Duty Act,

appeals were provided for to the Central Board of Revenue and it was the Central Board of Revenue which proceeded to state a case and refer questions of law to the High Court. But, in 1960, this position changed. Appeals became so numerous that it was found more convenient and satisfactory to entrust the appellate work under this Act also to the Tribunal in 1963 and 1964 the Super Profits Tax and the Companies (Profits) Surtax Act adopted the machinery available under the other Direct Tax Acts. The Interest Tax Act, 1974, the compulsory deposit scheme (Income Tax Payers) Act, 1974 and the Hotel Receipts Tax, 1981 have also been framed on the same lines and orders passed on First Appeal by the appropriate authorities under these various enactments have been made appealable to the Tribunal. Even orders passed by the First Appellate Authority under the Wealth Tax Act, 1957 and the newly promulgated Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Thus, the Tribunal is, today, not merely confined to appeals under the Income-tax Act. It is really a Direct Taxes Appellate Tribunal dealing with appeals under all the various enactments above referred to.

The phenomenal increase in the work before the Tribunal naturally called for its expansion and a stepping up of the number of benches constituting it. To start with, there were only three benches of the Tribunal at Delhi, Madras and Bombay. In 1942, a fourth bench was set up at Allahabad. After 1943, the number of Benches of the Tribunal was increased from time to time but the increase was very gradual. A comparison of the strength of the Tribunal with the figures



of institution shows that the increase in Benches was not commensurate with the number of taxpayers or the number of Income Tax Officers, Appellate Assistant Commissioner or Commissioners, whose orders provided appeals to the Tribunal. The Tribunal, therefore, lagged behind in its disposals and this resulted, at one stage, in the accumulation of an alarmingly large extent of arrears. It is after this that steps were initiated for stepping up considerably the number of benches, from 14 in 1967 to 23 in 1969-70, 30 in 1971-72 and 38 in 1973-74. The next spurt of growth in the number of benches came in the year 1997, when the strength of the benches rose from 38 to 53; and, the last increase in its strength came in the year 2003-04 when ten more benches were constituted. The latest bench to be constituted is in the city of Ranchi. Currently, the sanctioned strength of the Tribunal is 63 benches spread over 27 stations comprising of 126 Members.

The expansion was so planned as to have, as far as possible, a bench of the Tribunal in every one of the State of India. For facility of working, different benches of the Tribunal were assigned cases from different territories. The territorial jurisdiction of the Benches is determined by the orders of its President issued from time to time. The creation of these benches resulted in making redress possible to the taxpayer at their door steps and avoiding the necessity of their travelling long distances, once to file appeals or Reference Applications, and against for their hearing. Subsequent experience has shown that a few of these benches are not viable, the number of appeals before them not being always sufficient to keep the bench busy

throughout the year. But the location of the Tribunal at these stations has not been withdrawn and the members at these stations are kept fully busy by being asked to go on tour to other places in such a way as to reduce the arrears in such places and thus sub-serve the convenience of the taxpayer public and maintain the pace of disposal of cases. With the increase in the number of benches thus sanctioned, with an organised planning of tours of members and by a determined effort to speed up its work, the Tribunal has been able to contain the "docket-explosion" in this important field of law.

FUNCTIONARIES OF THE TRIBUNAL

For smooth and better running, the Tribunal is divided in various zones. The headquarter being at originally at New Delhi but since 1952 at Mumbai. At the top there is a President, followed by a Senior Vice-President, Vice-Presidents and members in the judicial functioning and thereafter the supporting staff.

- i) **PRESIDENT:** The Tribunal is headed by a President who administers its functioning, constitutes various Benches and decided their places of sitting. Originally, as provided in sub-section (4) of section 5A, only a Judicial Member could become the President of the Tribunal. An amendment of the year 1953 also removed the previous restriction that only a Judicial Member could become the President and provided, instead, the "ordinarily", a Judicial Member should be appointed President, thus making it possible, in certain circumstances, for an Accountant Member also to be appointed as the President. Shri P. C. Malhotra

became the first Accountant Member to become the President of the Tribunal. Since then, there has been no distinction between a Judicial Member and an Accountant Member. In 2013, clause (a) was inserted in Section 252(3) empowering the Central Government to appoint a sitting or retired judge of a High Court as the President.

- ii) **SENIOR VICE-PRESIDENTS AND VICE-PRESIDENTS:** In 1972, the section was amended to create the posts of Vice-Presidents. Four such posts were created and the four Vice-Presidents were placed in charge of four zones, namely, North, East, West and South. The administration decentralised to some extent by delegation of certain powers by the President to the Vice-President with equivalent pay and status to that of a President of the Tribunal was created. In 1997, four more zones and four more post of Vice Presidents were created one each at Ahmedabad, Hyderabad, Chandigarh and Bangalore.

Apart from the President, Vice-Presidents and Members, the work of the Tribunal is carried on by a loyal and sincere staff consisting of about 600 persons, headed by a Registrar. The Registrar is assisted, in the regional offices, by the Deputy Registrars and, in each station, by one or more Assistant Registrars depending upon the member of benches.

INDEPENDENT FUNCTIONING OF TRIBUNAL

To begin with, the Finance Department of the Government of India (the Central Board of Revenue) was initially in-charge

of the Tribunal. However, from 30th May, 1942 in deference to public opinion, the Tribunal was put in the charge of the Legislative Department, the predecessor of the present Ministry of Law and Justice of the Government of India. As stated by Shri R.S. Gae, the then Secretary Ministry of Law, the Appellate Tribunal is functioning as an independent authority without any interference by any Ministry or Department of the Government of India in the discharge of the functions entrusted to it by law or otherwise. This was affirmed by the Supreme Court of India in the case of *ITAT vs. V. K. Aggarwal 235 ITR 175 (SC)* wherein the proposition that the Tribunal's functioning was under the administrative control of the executive wing of the Government i.e. Ministry of Law, Justice and Company Affairs was not accepted and it was held that the Union Law Secretary has no control over the judicial functioning of the Tribunal. It was conceded before the Supreme Court in this case that Tribunal did perform judicial functions and it was a court subordinate to the High Court.

On the independence of the Tribunal, Hon'ble Mr. Justice Amal Kumar Sarkar, the then Chief Justice of India stated in his inaugural address at the time of the Silver Jubilee of the Tribunal as under:

"There may be people who feel that the Tribunal is not in the full sense a judicial body. I venture to think that none of them is an assessee. I also venture to think that such a notion is superficial and stems from the want of knowledge of the actual working of the Tribunal. The judges who preside over the Tribunal are capable men, men of



character and integrity. Anything that is unjudicial is quite foreign to them. The presiding officers of the Tribunal are selected by a body of experienced men presided over for some years now by a judge of the Supreme Court. This should be a guarantee that the right type of men are selected. The Ministry of Finance which is in charge of the collection of taxes has no control over that body or the Tribunal. The Tribunal is under the Ministry of Law for the purposes of administrative control only. That Ministry is not interested in the collection of taxes and does not exercise any control over the judicial work of the Tribunal. The Members of the Tribunal are divided into two classes, called judicial and Accountant. The Judicial Members are selected from members of the legal profession who have specialised in tax matters, and also from the State civil Judiciary. The present President of the Tribunal, Mr. T. P. Mukherjee, before he joined the Tribunal, was an illustrious member of the State Judiciary of Bihar, having last held the office of a District and Sessions Judge in that State. I suppose people selected can be expected to be as independent as anybody else. The Accountant Members of the Tribunal are selected from among the higher officers of the Income Tax Dept, usually Commissioner and Senior Appellate Asst. Commissioners and from the practising Chartered Accountants. So far as the later are concerned, there can be no reason to think that they cannot be independent. The independence of the members recruited to the

Tribunal from the officers of the Income Tax Department is secured by so arranging things that they cannot look forward to anything from the Income tax Department or the Ministry of Finance they cannot go back to higher posts in that Department. Their promotion and tenure of office are not controlled by the Ministry of Finance. These are in the hands of the Ministry of Law."

REVIEW OF WORKING OF THE TRIBUNAL

The work of the Tribunal has come up for review in one form or another by several committees and Commissions in the course of these 75 years. The Income Tax Investigation Commission appointed in 1947 examined the working of the Tribunal with special emphasis on its terms of reference which were to examine the extent to which the existing law relating to and procedure for the assessment and collection of taxes were adequate to prevent evasion thereof. The important among the recommendations which it made in connection with the Tribunal and which were accepted by the Government were the proposal to refer a point of law arising from the order of the Tribunal directly to the Supreme Court for opinion in cases where a conflict existed between the decisions of two High Courts, and the recommendation to give both Department and the taxpayer the right to submit cross objections when they have not filed appeals and are only respondents in appeals filed by the other party. The Taxation Inquiry Commission appointed in 1953-54 also had an occasion to examine the working of the Tribunal indirectly, but by reason of its terms of reference it could not get into the details

of the major aspects of the functioning of the Tribunal.

It is not as if the Tribunal has had a smooth existence. There were some doubts and misgivings about its continuance and even its existence was threatened at times. In its Twelfth Report regarding the Income-tax Act, 1922 (dated 26th September, 1958), the Law Commission of India considered the existing system of appeals to the Appellate Tribunal and thereafter a reference to the High Court on questions of law as very cumbersome and causing unnecessary delay in disposing of the appeals. It accordingly recommended that where the amount in dispute was ₹ 7,500/- or more, the appeal would be on fact as well as on law and that in other cases the appeal would be only on questions of law. This view was not, however, shared by the Direct Taxes Administration Enquiry Committee, which in its Report dated 30th November, 1959, observes that the Tribunal, consisting of equal number of Judicial Members and Accountant Members, is best suited to deal with the problems arising from the administration of the taxing statutes and that it was convinced that the Tribunal could not be dispensed with and should continue.

The recommendation made by the Law Commission as aforesaid dealt with the situation as it existed prior to 1956-57, and since then, the conditions have materially altered by the lapse of time. In any event the Government of India and the Parliament did not accept the said recommendation and provided for the continuance of the Tribunal in the Income-tax Act, 1961 on the same lines on which it functioned under the Indian Income-tax Act, 1922.

The 115th Report of the Law Commission while examining the necessity and expediency of setting up a 'National Tax Court' vis-à-vis a Tribunal under Article 323B complimented the working of the Tribunal in the following words:

"There is near unanimity of opinion that Income Tax Appellate Tribunal has immensely justified its existence and largely vindicated the trust reposed in it. It has, therefore, to be retained with its regional jurisdiction. It would be the fact finding authority."

The Investigation Commission under the Chairmanship of Sir Srinivasa Vardhachariar was in favour of the Tribunal having the power to award costs in the appeals before it and also to grant refunds of the whole or part of the fees paid by an appellant or applicant for reference, depending upon the degree of success obtained by him. The first part of the suggestion has been implemented in 1998 by the Finance (No. 2) Act but the other recommendation has not been accepted so far.

OFFICIAL PUBLICATION OF TRIBUNAL DECISIONS i.e. "ITD"

The Investigation Commission under the Chairmanship of Sir Srinivasa Vardhachariar was the first forum which thought it desirable that some adequate machinery should be devised, after consultation with the Tribunal, for the reporting of the decisions of the various benches. This suggestion, made in 1944, posed several practical hurdles only in 1982 the then President of the Tribunal Late Shri T. D. Sugla was successful and gave shape to the idea of printing of Tribunals orders with the



help Mr. Bhargava of Taxman. It is with a view to avoiding/minimising conflicting decisions of different benches, to bring uniformity in its decisions and reducing the unnecessary wastage of time in respective arguments. It is continuing since then very successfully and affording a very valuable guide to the appearing counsel and the litigating public. An editorial board is constituted at Delhi for editing various orders received from various centres and marked by the bench concerned or the Vice-President, senior Vice-President or the president as the case may be. Every year four volumes are published and volume 155 is in current these days. Each volume contains about 60-70 decisions of the benches including the special benches and Third Members. Besides Taxman and CTR publications, the ITR publication has started publishing the Special Bench and Third Members decisions in their reports along with decisions of High Courts and Supreme Court.

The Tribunal has created a website leading towards more transparency in its functioning whereby the orders passed by the Benches are uploaded immediately after pronouncement and even the list of cases fixed for hearing is uploaded well in advance so that anybody can directly access the internet to know as to whether the case is posted in a particular week or not. By December, 2012, the Tribunal had started the experiment with E-court at Mumbai with linkage to Nagpur. Presently, a renewed endeavour is being launched to set up many such E-courts all over India starting with the E-court between Ahmedabad and Rajkot. It is not out of place to mention that the Tribunal has always kept in mind the policy of rendering justice at the doorsteps of those

seeking justice. It has operated circuit Benches and heard cases in places where there was no regular Bench.

The Benches of the Tribunal are in 27 cities, which are housed in either rented or Government buildings. Though the Tribunal does not have its own buildings, except at Jaipur which is at an advanced stage of completion, this factor has not prevented the Tribunal from discharging its functions efficiently. Efforts are on to construct own buildings for office-cum-residential purposes at several places. It is hoped that in the times to come, the Benches of the Tribunal will have the privilege of having the best infrastructure needed for the smooth functioning of the Benches; nevertheless, compared to the infrastructure available 20 years ago, the facilities presently available are fairly good and it is likely to be much better in the coming future.

The Tribunal is completing 75 glorious years of service to the nation and celebrates Platinum Jubilee on 25th January, 2016. It is the oldest Tribunal amongst Administrative Tribunals in the country. We, at the Tribunal, can proclaim most humbly that going by the manner in which it has functioned since 1941, its contribution in the field of adjudicating tax disputes between the Government and the taxpayers has been exemplary and unparalleled on account of its impartiality, easiness and speediness. On the Platinum Jubilee, the Tribunal pristinely reflects a glorious past, shining present and an equally promising future. Not one to be resting on the past laurels, the Tribunal has a vision of becoming even more useful in the task of nation building in the times to come.