

CHAPTER 1

INTRODUCTION

Chapter XVII of Income-tax Act, 1961 deals with “collection & recovery of taxes”. There, in part D, sections 222 to 232 of the Income-tax Act, 1961 and Schedules II and III of the Act, and the Income-tax (Certificate Proceedings) Rules, 1962 together constitute a self-contained code prescribing the various modes for the recovery of arrears of taxes under the Income-tax Act, 1961 (henceforth referred to as the Act).

Under the 1922 Act, recovery was contemplated through the collector under the State law dealing with land revenue and provided for exercise of the powers of a civil court in those proceedings. The 1961 Act itself provides for the law of recovery and collection. Sections 220 to 232 in part D of Chapter XVII deal with collection and recovery of tax.

Relevant Provisions

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Responsibilities of the Assessing Officer

The assessing officer is responsible for recovery of tax, whether the demand represents tax assessed by him or is the result of any order passed by the Appellate Authority or the Commissioner of Income-tax.

Remedies against Assessing Officer's Action

- (a) Application under section 220(3) for extension of time/allowing payment in installment.
- (b) Application under section 220(6) for not treating the Assessee to be in default.
- (c) Application before the Appellate Authority where appeal is pending.
- (d) Writ petition under Article 226 against the Rejection Order.

Role of Tax Recovery Officer (TRO)

Where the assessee is in default in making the payment of tax, the proceedings for recovery are carried out by the TRO. TRO has special powers for recovery of arrears of tax demand by way of causing attachment and sale of the assessee's movable and/or immovable property; arrest the assessee and his detention in prison and appointment of a receiver for management of the assessee's movable and immovable properties.

Where Income-tax department appropriated amount deposited by assessee with a firm towards income-tax dues of firm, in absence of any allegation of fraud against Income-tax department, civil court had no jurisdictions to entertain recovery suit filed by assessee against Income-tax department

Respondent deposited certain amount with a firm - Said firm did not pay income-tax dues and, therefore, its accounts were attached and money in those accounts was appropriated towards arrears of income-tax - Respondent filed civil suit against department for recovery of amount deposited by him with firm - He also alleged that he was induced by a fraud to deposit said amounts - Whether in terms of section 293 a civil court is prohibited from entertaining a suit to set aside or modify any order or proceedings initiated under Act and exception would be available only where order passed or proceedings initiated are vitiated by fraud and then also if fraudulent act is attributed to an officer exercising power under Act - Held, yes - Whether since there was no allegation of fraud against department, jurisdiction of civil court to entertain suit against Income-tax department was barred under section 293 - Held, yes [Para 13][In favour of revenue]

A perusal of section 293 reveals that no suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under the Income-tax Act thereby leaving no ambiguity that a civil court is prohibited

from entertaining a suit to set aside or modify any order or proceedings initiated under the Income-tax Act. An exception would obviously be available where the order passed or proceedings initiated are vitiated by fraud and then also if the fraudulent act is attributed to an officer exercising power under the Income-tax Act. The plaintiff/respondent does not allege any fraud by or at the behest of the Income-tax department. The Courts below have held that the fraud was perpetuated by firm but have not returned a finding of fraud against the department. [Para 12]

The plaintiff/respondent was competent to file a suit for recovery against firm but in absence of any allegation of fraud against the department, could not maintain a suit against the Income-tax department. The jurisdiction of civil courts, to entertain the suit, against the Income-tax department, was barred by section 293. [Para 13]

Consequently, the suit filed by plaintiff/respondent was not maintainable against the Income-tax department. [Para 14] – [CIT, Patiala v. Nachhattar Singh (2015) 62 taxmann.com 36 (P&H)]

No Automatic Stay

The Madras High Court in *Paulsons Litho Works v. ITO* has observed that mere filing or pendency of an appeal does not constitute an automatic stay of the order under challenge or recovery of the tax or penalty under dispute in such appeal. This is so because the mere fact that an order is subject matter of appeal can furnish no ground for not following it unless its operation is suspended by a competent court. – [Paulsons Litho Works v. ITO (1994) 208 ITR 676 (Mad)]

Arrears of Tax

(Rupees in Crores)

Arrears	Corporation Tax	Income Tax	Interest	Penalty	Total
1984-85 and earlier years	119.12	213.37	173.65	67.71	574.45
1985-86	59.53	90.18	85.35	19.95	254.99
1986-87	148.18	131.02	178.55	39.35	497.10
1987-88	443.98	225.58	312.92	84.35	1,126.83
1988-89	1398.00	518.52	751.54	170.23	2,838.29
Total	2169.4	1178.67	1561.9	381.5	5,291.66