
preface

to the fifth edition 'Income-tax Law'

Since the fourth edition of this work, much water has flowed not only in the shape of continuous and torrential amendments effected by the Legislature but also judicial pronouncements, covering numerous grey areas, handed down by the different High Courts and the Supreme Court. It may be recalled that the 1961 Act has been burdened with as many as 80 Amending Legislations [as listed at pages 3-6, post], and the 1962 Rules have been burdened with 338 Amending Rules, upto the Income-tax (Tenth Amendment) Rules, 1998, notified on 15th July, 1998. Other amendments are in the offing. Some of these are effecting revolutionary changes having far-reaching impact. These necessitated the bringing out of this Fifth Edition, a **Silver Jubilee Edition**, of the work in an exhaustive and comprehensive manner. We earnestly assure our readers that the entire work of bringing out this Fifth Edition, in an equal number of Volumes, will not take more than two years, God so willing.

Each and every Volume of the work, in its Fifth Edition, will be complete in the sense that it will elaborately and exhaustively deal with all the sections of the Act discussed therein, the legislative anvil, the commentary portion inclusive of all decided cases up-to-date, the departmental circulars, etc., if any, issued thereon or thereabout; and the general commentary is on the schemes and/or lines of the earlier editions. Each Volume will have its own Table of Cases and an elaborate and exhaustive General Index. All the changes brought out through the various enactments have been discussed elaborately at the appropriate place with exhaustive and comprehensive treatment.

It would not be an exaggeration to say that it is very easy to enact laws, more particularly fiscal laws, but it is a difficult task to implement or execute such laws in their proper perspective. So far as implementation or execution of the direct tax laws are concerned, the first and the foremost link in this regard is the Assessing Officer, who is required to interpret and understand such laws in a judicious manner so as to do justice to the Government as well as the taxpayers. In practice, we all see that in spite of his proper and judicious understanding of a particular statutory provision favouring the taxpayer, the Assessing Officer is constrained not to follow such interpretation because he is dealing with a scrutiny case wherein he is not supposed to accept such interpretation favouring the taxpayer under the fear of audit objection as also fulfilment of high target of tax revenue collection unrealistically fixed in his own case. Not infrequently such fears result in high-pitched or harsh assessments. One of the worst hardship of the taxpayer in such cases is to get stay of demands raised pursuant to such harsh assessments. No doubt, for relieving such hardship of the taxpayers, there is administrative instructions issued in the year 1969 by the Board to the effect that where the income determined on assessment was substantially higher than the returned income, say, twice the latter amount or more, the collection of tax in dispute should be held in abeyance till the decision of the appeals, provided there were no lapse on the part of the assessee. In spite of such unambiguous instructions, stay is very rarely granted in such harsh assessment cases. The practice of making harsh assess-

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ments can be avoided, to a greater extent, by making the Officer concerned accountable for over-assessments in cases where the additional demands raised by him are routinely held invalid by the appellate authorities.

Sometimes, it is seen that in spite of authoritative pronouncement of the apex court with regard to a particular point, the Officers attempt not to follow such binding decision. One such instance is the Supreme Court decision in *Indian and Eastern Newspaper Society v. CIT* [(1979) 119 ITR 996 (SC)], wherein it was ruled that an opinion of an internal audit party of the Income-tax Department on a point of law could not be regarded as "information" within the meaning of section 147(b) as it stood upto 31-3-1989 and the same could not lead to proper and valid initiation of reassessment proceedings under that section. From the decided cases even reported in 1998, it is apparent that reopening under the then section 147(b) was made without taking notice of the above Supreme Court ruling. Such infructuous work could have been avoided on the part of the Officers concerned had they noticed such Supreme Court ruling in a judicious manner.

In spite of judicial guidelines laid down as to the ambit and scope of the provisions about making of prima facie adjustments under section 143(1)(a), such prima facie adjustments are, in practice, made not keeping in view such judicial guidelines but are based on the arbitrary and whimsical interpretation of their own by the tax officials as is evident from the perennial flow of judicial decisions coming to light from time to time.

It is a fundamental and elementary principle of enacting a particular provision in a statute that all the consequential amendment(s)/change(s) are also to be carried out throughout that statute so as to keep harmony amongst numerous provisions contained in that statute on a particular or allied subject. But sometimes, it so happens that such things are lacking and unintended anomalies are inducted, not at the time of introduction of the particular Bill but, in the course of its passage. A glaring instance of perennial avalanche of incessant amendments may be evidenced from the provisions of section 80-IA, which was newly inserted (w.e.f. 1-4-1991) by the Finance (No. 2) Act, 1991. That section 80-IA has been burdened with as many as 67 amendments in a short span of 7 years. The endless changes are forcing the taxpayers to disrespect the law because innumerable variations cause them so much harassment without achieving public good. Every year millions of man-hours-of tax-gatherers, taxpayers and tax advisors-are totally spent wastefully in grappling with the torrential spate of amendments made not only through the Finance Acts but also through the Amending Acts. Even where the law is settled on a point by the apex court interpreting a particular provision of law which is operative for a long period of 20/30 years, the same is unsettled by the intervention of the legislature so as to nullify the effect of such judicial pronouncement not prospectively but retrospectively from the date of the origin of such provision under the guise of changing the law so as to commensurate with the underlying intention of introducing such provision at its inception.

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There is no justification for charging interest from the taxpayer for delayed tax payments at a rate higher than that which is granted to the assessee for delayed re-funds.

Now coming to the grant of refunds and interest on such refunds, it may be mentioned that the refund of the excess tax paid along with interest under section 244A thereon has to be granted at the intimation stage as ordained by section 143(1)(a). But, in practice, in cases where refund is due to the assessee even the intimation is not sent for a long time to the taxpayer concerned, not to speak of refund voucher. Although where there is a default on the part of the taxpayer to pay the tax for a short period, he is fastened with the liability to pay interest @ 2% per month or part thereof, what kind of action is taken by the Department against the persons who are playing delaying tactics in granting refund and/or interest on refund?

Now reverting to the preface itself, regarding Volume 1 (ss. 1 to 35E), the following novel and unique features, which would also be inducted in each of the subsequent volumes, may be summarized:-

Historical background: Even the omitted provisions from their very inception have been extracted, giving copious footnotes, accurately and completely with historical background, if any. Complete annotations, tracing out the evolution and development of law from the very beginning of a particular statutory provision and its judicial interpretation, have been given so as to enable one to catch hold of the statutory law, as also judge-made law, which is relevant for a particular assessment year-may be assessment year 1962-63.

Statutory law updated: Sections 1 to 35E have been updated till 1st August, 1998, as per the Finance (No. 2) Act, 1998. Each of the statutory provisions including the latest one has been analysed in a very lucid and well-integrated manner, embracing in depth all the aspects of the law(s) concerned.

Legislative amendment(s): Each section is followed by "Legislative amendment(s)", which fully and exhaustively elaborates the scope and effect of each of the amending legislation(s), also extracting wherever available, the departmental circular(s) giving the intent and effect of such legislative change(s), also indicating the anomaly(ies), if any.

Accurate and precise footnotes: Accurate and precise footnotes have been inserted for showing statutory changes to the relevant sections, etc., indicating the particular date from which such change(s) has/have become effective.

Departmental circulars: Clarificatory as well as explanatory circulars issued from time to time have been fully reproduced at appropriate places, indicating the relevancy of the same in the present state of law.

Schemes, Notifications, Press notes, Press releases, Guidelines, etc., extracted: Relevant Schemes, notifications, press notes, press releases, guidelines, etc., issued from time to time have also been reproduced section-wise.

Intelligible and appropriate headings and sub-headings: Not only statutory

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provisions but also the judicial decisions have been discussed elaborately under more than 11,000 intelligible and appropriate headings and sub-headings with a view to give brilliant, reliable and systematized analysis of each of them.

Judicial decisions meticulously discussed: So far as Volume 1 is concerned, more than 10,000 judicial decisions have elaborately been discussed. Each and every judicial decision has been examined carefully with precision pinpointing all the aspects comprised therein giving comprehensive and exhaustive elucidation also showing cases overruled, followed, approved, disapproved, dissented from, etc., at appropriate place(s). Also the fate of the applications for special leave to appeal to the Supreme Court made under Article 136 of the Constitution has been indicated along with citation of the case concerned. Almost all the case-laws reported in ITR, Tax LR, AIR, CTR, Taxation and Taxman and other journals progressively till 31st August, 1998 (upto 232 ITR) have been incorporated in Volume 1 of this work at the appropriate places. Judicial decisions concerning other branches of law, such as Hindu Law, Mohammedan Law, Law of Civil Procedure, Law of Insurance, Law of Transfer of Property, Law of Partnership, Company Law, Law of Trusts, etc., having a bearing on the subject of the work have also been discussed thoroughly and exhaustively.

Principles about interpretation of statutes discussed elaborately: The principles about interpretation of statutes have been dealt with more elaborately and exhaustively.

Cross-references given: For better understanding and easy access to the required point(s), cross-references have been given, wherever necessary. Accurate and precise footnotes have been inserted for facilitating cross-references as also showing substantial change in law effected in the relevant Statutes, Rules, Schemes, etc.

Exhaustive, comprehensive and precise commentary: This is an exhaustive, comprehensive and precise commentary and is a valuable guide on the subject written with the object of giving a detailed, reliable, authentic and thorough coverage of all aspects of the law about income-tax.

Table of cases and exhaustive and easy-to-find subject index: An alphabetical Table of Cases to Volume 1 consists more than 10,000 cases which runs into 185 pages had been given. At the end of Volume 1 an exhaustive and easy-to-find Subject Index has been given, covering all the subjects dealt with therein, which runs into 200 pages.

With a view to make it a definitive guide, a veritable mine of innovative and informative materials has been inducted so as to make it an indispensable tool to all persons who are directly or indirectly concerned with the subject.

Suggestions for improvement will be appreciated by the authors.

Calcutta
Dated 21st September, 1998

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Since the inception (w.e.f. 1-7-1994) of the Service Tax provisions, much water has flowed not only in the shape of continuous and torrential amendments effected by the Legislature but also judicial pronouncements handed down by the different CESTAT Benches, CEGAT Benches, High Courts and the Supreme Court.

It may be recalled that the Service Tax provisions were introduced in 1994 Budget for the first time in India. No separate enactment has been enacted for the Service Tax provisions till date. The provisions of Service Tax were originally enacted as Chapter V of the Finance Act, 1994 (32 of 1994), containing sections 64 to 96. By the Finance Act, 2003 (32 of 2003), a new Chapter VA, relating to Advance Rulings with respect to Service Tax, containing sections 96A to 96-I, was inserted.

At its inception (w.e.f. 1-7-1994) only three services, i.e., Stock Broker Services, Telephone Services and General Insurance Business Services, were brought under Service Tax net and a meagre rate of 5% was fixed as Service Tax. From time to time number of taxable services goes on increasing and also the rate of Service Tax. At present, the rate of Service Tax is 12.24% and the number of taxable services brought under Service Tax net is 97¹.

Now changing over to the presentation and/or categorisation of the Treatise the following points are worth-noting:—

<i>Charts 1 to 11</i>	Various important Service Tax provisions enumerated in brief at a glance
<i>Part I (Chap. 1)</i>	Introduction
<i>Part II (Chap. 1)</i>	Extent, commencement and application of Chapter V of Act 32 of 1994 enacting provisions about levy of service tax [s. 64 of Act 32 of 1994]
<i>Part III (Chap. 1)</i>	Definitions [s. 65 of Act 32 of 1994] Statutory provisions relating to definitions from 1-7-1994 to 1-5-2006 along with case laws pertaining to General Provisions as well as Service Tax provisions
<i>Part IV (Chaps. 1 to 178)</i>	Definitions as given under Service Tax provisions alphabetically arranged Chapterwise as they stands from time to time
<i>Part V (Chaps. 1 to 118)</i>	Taxable services as given under Service Tax provisions alphabetically arranged Chapterwise as they stands from time to time
<i>Part VI (Chaps. 1 to 50)</i>	Chapterwise and sectionwise enumeration of statutory provisions as well as commentary and thorough discussion of case laws from sections 65A to 96-I
<i>Appendices 1 to 21</i>	Exhaustive collection of full and accurate texts of all the Rules, relevant extracts of the Service Tax provisions from the various Finance Act(s), Explanatory Circulars, etc., etc.

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Now reverting to the preface itself it may be stated that in spite of the fact that there may exist certain other publications on the subject, an earnest endeavour has been made in an eminently useful way with the following novel and unique features:—

Historical background: Even the omitted provisions from their very inception have been extracted, giving copious footnotes, accurately and completely with historical background, if any. Complete annotations, tracing out the evolution and development of law from the very beginning of a particular statutory provision and its judicial interpretation, have been given so as to enable one to catch hold of the statutory law, as also judge-made law, which is relevant for a particular period.

Statutory law updated: This Treatise has been updated till 1st May, 2006, as per the Finance Act, 2006 (21 of 2006). Each of the statutory provisions including the latest one has been analysed in a very lucid and well-integrated manner embracing in depth all the aspects of the law(s) concerned.

Definitions alphabetically arranged in Chapterwise form: In this Treatise, each and every definition from its very inception has been reproduced and/or current definition paraphrased as they stand from time to time in an alphabetical order in Chapterwise form so that the same would be of great use to the readers.

Sectionwise exhaustive, comprehensive and precise commentary on Service Tax: For the first time an attempt has been made by the Authors of this Treatise to bring out a sectionwise exhaustive, comprehensive and precise commentary on the Service Tax provisions.

Taxable services alphabetically arranged in Chapterwise form: In this Treatise, each and every taxable service from its very inception has been dealt with in an alphabetical order in Chapterwise form in a precise and lucid manner so as to cover up each and every aspect, *i.e.*, taxable with effect from, introduction, legislative amendment(s), definitions applicable, scope, valuation provisions, rate applicable, exemptions provided, provisions with regard to export and/or import of taxable service(s), notifications/circulars/trade notices applicable, along with thorough discussion of each and every case law relating to the particular taxable service.

Legislative amendment(s): Each section as well as each taxable service chapter is followed by 'Legislative amendment(s)', which fully and exhaustively elaborates the scope and effect of the Amending Legislation(s).

Accurate and precise footnotes: Accurate and precise footnotes have been inserted for displaying statutory changes to the relevant sections, etc., indicating the particular date from which such change(s) has/have become effective.

Exemption Notification(s): Exemption Notification(s) issued from time to time under section 93 have been fully reproduced under section 93, *i.e.*, Part VI, Chapter 37, in a chronological manner giving serial numbers and stating its latest/current position, *i.e.*, whether the same has been amended, rescinded and/or superseded. Every attempt has been made to give the citation(s) of the Journal(s) in which the same has been published also with GSR and/or SO numbers.

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Cross-references of the exemption notification(s) given in the Chapters relating to different taxable services: As the full text of the exemption notification(s) has/have been given under section 93 in a chronological manner mentioning serial numbers, cross-references of such notification(s) stating serial numbers with their placement have been given in the Chapters relating to different taxable services to which they relate.

Circulars, etc., extracted: Relevant circulars, etc., issued from time to time have also been reproduced sectionwise and/or taxable servicewise. The circulars, etc., in the nature of Explanatory Circulars which concerns more than one taxable service(s) have been chronologically arranged in Appendix 17 of this Treatise.

Copious intelligible and appropriate headings, sub-headings, synopsis, case-law references & citations etc. more than 6,500: Not only statutory provisions but also the judicial decisions have been discussed elaborately under more than 6,500 copious intelligible and appropriate headings, sub-headings & synopsis with a view to give a logical, brilliant, reliable and systematized analysis of the principles of law thereabout.

Exhaustive commentary of all the 35 sections (even the omitted ones) of the Central Excise Act, 1944, which have been applied from time to time through section 83 of the Finance Act, 1994: An exhaustive commentary of all the 35 sections (even the omitted ones) of the Central Excise Act, 1944, which have been applied to the Service Tax provisions have been given with copious footnotes and accurate and complete historical background.

Judicial decisions, relating to Service Tax provisions and applied Central Excise provisions, meticulously discussed: Each and every judicial decision, relating to Service Tax provisions as well as the applied Central Excise provisions, has been examined carefully with precision pinpointing all the aspects comprised therein giving comprehensive and exhaustive elucidation.

Equivalent citations: An attempt has been made in this Treatise to give equivalent citations of various journals both in case of statutory provisions as well as judicial decisions.

Principles about Interpretation of Statutes discussed elaborately under section 66 of Act 32 of 1994: Under Part VI, Chapter 2, the principles about Interpretation of Statutes have been dealt with more elaborately and exhaustively.

Synopsis: Each and every Chapter as well as Appendix contains a Synopsis displaying copious intelligible and appropriate headings with their paragraph number and page number.

Appendices: In order to make its coverage wide and comprehensive, 21 Appendices have been included giving exhaustive collection of full and accurate texts of all the Rules, relevant extracts of the Service Tax provisions from the various Finance Act(s), Explanatory Circulars, etc., etc.

Charts: As many as 11 easy to understand Charts (running into 112 pages) concerning the current statutory position of each and every taxable services in brief, legislative status of definitions from 1-7-1994 to 1-5-2006, legislative status of taxable services from 1-7-1994 to 1-5-2006, 8-Digit Accounting Codes for various taxable services (in Chronological as well as Alphabetical order),

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calculation of Service Tax from time to time, changes made by various Amending Acts, period of limitations, interest/penalties imposable, jurisdiction of Service Tax Commissionerate(s) along with the address and telephone number of Help Centres, etc., have been given so as to enhance the utility of this Treatise.

Ready Reckoner 13 Years', yearwise "Ready Reckoner" 1994 to 2006 : Ready Reckoner 13 Years', yearwise "Ready Reckoner" 1994 to 2006 provided with A Ready Reckoner Chart displaying periodical calculation of Service Tax as it stands payable from time to time, has been given in Chart No. 5 which makes the publication as a complete and quick referenceable for any period of time.

Valuable guide: This Treatise will prove to be a valuable guide on the subject written with the object of giving a detailed, reliable, authentic and thorough coverage of all aspects of the law not only about Service Tax provisions but also about applied Central Excise provisions.

Easy-to-find exhaustive Subject Index with more than 8,200 headings & sub-headings; Case-law references & citations more than 5,800 provided: An alphabetical Table of Cases consists more than 5,800 cases which runs into 130 pages had been given. At the end an exhaustive and easy-to-find Subject Index with more than 8,200 headings & sub-headings provided, covering all the subjects dealt with in all the subject matters of the book therein, which runs into about 182 pages.

The above novel and unique features and exhaustive commentary both on Service Tax provisions and applied Central Excise provisions make this Treatise an indispensable tool to all the persons who are directly or indirectly concerned with this subject.

With the object of making it a definitive guide, no stone has been left unturned and presentation is in a compendious and accessible form with a veritable mine of innovative and informative materials not to be easily found at one place.

It is hoped that this Treatise would serve the purpose of the readers. Any suggestions for improvement will be appreciated by the Authors.

CHURU

Dated 23rd September, 2006

“NAVRATRI”

AUTHORS
