

CONCEPT OF INCOME

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1. DIFFERENCE BETWEEN RECEIPT AND INCOME

- **How the term income is understood in common parlance?**
- **Whether all receipts constitute an income or is there any difference between a receipt and an income?**
- **CIT vs. Shaw Wallace and Co. [1932] 6 ITC 178 (CAL.)-** “The object of the Indian Act is to tax "income" a term which it does not define. It is expanded, no doubt, into "income profits and gains," but the expansion is more a matter of words than of substance. Income, in this Act connects a periodical monetary return "coming in" with some sort of regularity, or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something, which is often loosely spoken of as "capital". But capital, though possible the source in the case of income from securities, is in most cases hardly more than an element in the process of production.”

- **Dilip Kumar Roy vs. CIT [1974] 94 ITR 1(Bom)** – “It is well settled that by sections 3 and 4 of the 1922 Act, the Act imposes a general liability to tax upon all income, but the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision. Where however a receipt is of the nature of income, the burden of proving that it is not taxable, because it falls within an exemption provided by the Act, lies upon the assessee.”
- **Cadell Wvg. Mill Co. (P.) Ltd. vs CIT [2001] 249 ITR 265 (Bom)** - The Bombay HC in the said decision has held that it is well-settled that all receipts are not taxable under the Act [**CIT vs. D.P. Sandu Bros. Chembur (P.) Ltd.**]- [2005] 273 ITR 1 (SC)]

2. TO ASCERTAIN A RECEIPT CONSTITUTES INCOME WHETHER NATURE OF RECEIPT IS RELEVANT?

Two types of receipts: Capital & Revenue

- **SOME RELEVANT FACTORS FOR DETERMINING THE NATURE OF RECEIPT**
 - Frequency of receipt [lump sum or periodic sum] - **P. H. Divecha vs CIT [1963] 48 ITR 222 (SC) & CIT vs Panberi Tea [1965] 57 ITR 422 (SC)**
 - Accounting treatment including nomenclature given in books of account – **National Cement Mines Industries Ltd. vs. CIT [1961] 42 ITR 69 (SC) & Tuticorin Alkali vs CIT 227 ITR 172 (SC)**

- Nature of a payment in the hands of a payer – **C Lakshmi Rajyam vs CIT [1960] 40 ITR 340 (Mad) & CIT vs. Presidency Co-op. Housing Society Ltd. [1993] 216 ITR 321 (Bom)**
- Frequency of transaction- Single or isolated transaction or multiple transactions – **CIT vs. Best and Co. (P) Ltd. [1966] 60 ITR 11 (SC)**
- Gainful reference can be made to the following case laws while determining the issue whether a receipt is capital or revenue in nature? (In relation to subsidy)
 - **Sahney Steel & Press Works Ltd. (1997) 228 ITR 253 (SC)**
 - **Ponni Sugars and Chemicals Ltd. (2008) 306 ITR 392 (SC)**
 - **CIT vs. Meghalaya Steels Ltd. [2016] 383 ITR 217(SC)**

[This position is altered vide Finance Act, 2015 by inserting clause (xviii) u/s 2(24) of the Act with effect from 01.04.2016]

- All ‘revenue’ receipts are chargeable to tax unless specifically exempt. On the contrary, ‘capital’ receipts may or may not be chargeable to tax. They constitute income and are chargeable to tax only if they fall within the parameters of section 45.
- Definition of Income also includes Sec. 2(24)(vi)- “any capital gains chargeable under section 45”
- **CIT vs Mahindra & Mahindra Ltd. [1973] 91 ITR 130 (Bom)**- “It is well settled that a receipt is not taxable when it is a fixed capital. It is taxable as a revenue item when it is referable to circulating capital or stock-in-trade. The fixed capital is what the owner turns to profit by keeping it in his own possession. Circulating capital is what he makes profit of by parting with it and letting it change its masters.”

- **CIT vs Krishna Industrial Corporation Ltd- [1973] 92 ITR 261 (Andhra Pradesh)** - The foregoing discussion may be summed up thus: The income-tax being a tax on the real income computed as per the provisions of the Act of a person earned during the previous year relevant for the assessment year in question, the receipts of capital nature during the same period and others exempted as per the provisions of the Act are not liable to be taxed. Hence, whether a particular receipt is income or capital assumes great importance and it is always a debatable moot point in the law of taxation, which turns upon the cumulative effect of all the relevant and material facts and circumstances of each case.

3. DEFINITION OF INCOME UNDER INCOME TAX ACT

- Section 2(24)
- Definition is inclusive and not exhaustive meaning thereby it also includes such things as word signifies as per its natural meaning.- **Emil Webber vs. CIT [1993] 200 ITR 483 (SC)**-
“The definition of 'income' in clause (24) of section 2 is an inclusive definition. It adds several artificial categories to the concept of income but on that account the expression 'income' does not lose its natural connotation. Indeed, it is repeatedly said that it is difficult to define the expression 'income' in precise terms. Anything which can properly be described as income is taxable under the Act unless, of course, it is exempted under one or the other provision of the Act.”
- Income includes losses- **CIT vs. Harprasad & Co. (P.) Ltd. [1975] 99 ITR 118 (SC) & CIT vs J. H. Gotla [1985] 156 ITR 323 (SC)**

4. CONCEPT OF REAL INCOME AND HYPOTHETICAL INCOME

- Real income: Income capable of being materialised
- **CIT vs. Shoorji Vallabhdas & Co. [1962] 46 ITR 144 (SC)**- “Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account.”

- **Godhra Electricity Co. Ltd. vs. CIT [1997] 225 ITR 746 (SC):** “The question whether there was real accrual of income to the assessee-company in respect of the enhanced charges for supply of electricity had to be considered by taking the probability or improbability of realisation in a realistic manner. If the matter was considered in this light it was not possible to hold that there was real accrual of income to the assessee-company in respect of the enhanced charges for supply of electricity which were added by the AO while passing the assessment orders in respect of the assessment years under consideration. The Tribunal, therefore, had rightly held that the claim at the increased rates as made by the assessee-company on the basis of which necessary entries were made represented only hypothetical income and the impugned amounts as brought to tax by the Assessing Officer did not represent the income which had really accrued to the assessee-company during the relevant previous years.”

- Some other case laws for reference:
 - *FGP Limited vs CIT* [2010] 326 ITR 444 (Bom)
 - *PCIT vs. Rohan Projects* [2020] 113 taxmann.com 339 (Bom)
 - *PCIT vs. Solapur District Central Co-operative Bank Limited* [2019] 261 Taxman 476 (Bom)

- **Notional income:** Over a period of time, the law with regard to “real income” has considerably evolved enumerating the ratio that only a real income is taxable under the Act. However, there are certain provisions that deviate from the aforesaid ratio. (eg. Sections 43CA, 50C, 50CA, 56(2)(x) and 92 etc). It is noteworthy that such provisions have been inserted with specific objects and often referred to as Specific Anti Avoidance Rules (SAAR) aiming at prevention of circulation of black money by discouraging cash transactions. Further, apart from these sections, there are certain provisions like Sec. 22 r.w.s. 23 that make a reference to the concept of notional income by bringing to tax “notional rent ” which a person does not earn in reality.

- **CIT vs. A Raman & Co. [1968] 67 ITR 11 (SC):** “The law does not oblige a trader to make the maximum profit that he can out of his trading transactions. Income which accrues to a trader is taxable in his hands. income which he could have, but has not earned, is not made taxable as income accrued *to him.*”
- Real Income cannot be said to have arisen by a person by trading with himself: **Sir Kikabhai Premchand vs CIT [1953] 24 ITR 506(SC)-** “It is well recognized that in revenue cases regard must be had to the substance of the transaction rather than to its mere form. In the instant case disregarding technicalities it was impossible to get away from the fact that the business was owned and run by the assessee himself. In such circumstances it was wholly unreal and artificial to separate the business from its owner and treat them as if they were separate entities trading with each other and then by means of a fictional sale introduce a fictional profit which in truth and in fact is non-existent. Cut away the fictions and one reach the position that **the man is supposed to be selling to himself and thereby making a profit out of himself which on the face of it is not only absurd but against all canons of mercantile and income-tax law.**”

5. CONCEPT OF ACCRUAL OF INCOME

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- Sec 5 postulates taxability of income on the basis of its accrual.
- The Income is said to have accrued when a person has right to receive the same with a corresponding debt (liability) on a payer.
- **E. D. Sason vs CIT [1954] 26 ITR 27 (SC)**- “Income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed debitum in praesenti, solvendum in futuro. Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him.”
- Concept of Accrual of Income vis a vis Stock in trade - **Chainrup Sampatram vs CIT [1953] 24 ITR 481 (SC)**

- Some other case laws for reference:
 - **CIT vs. Excel Industries Ltd. [2013] 358 ITR 295 (SC)**
 - **P.G. & W. Sawoo (P) Ltd. vs ACIT- [2016] 385 ITR 60 (SC)**

6. TAXATION OF INCOME IN RIGHT HANDS

- Income must be taxed in the hands of a person to whom it accrues. There is no bar on the assessing officer to initiate appropriate proceedings to tax such income in the hands of such a right person in spite of the fact that the income has already been assessed and taxed in the hands of other (wrong) person to whom it did not accrue.
 - **ITO vs. Ch. Atchiaiah- [1996] 218 ITR 239 (SC)**
 - **Maneklal Agarwal vs. DCIT- [2017] 396 ITR 721 (SC)**

7. RELEVANCE OF HEADS OF INCOME

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- The entire scheme of the Act relating to determination of income proceeds as under:
 - Section 2(24) defines income
 - Section 4 creates a charge on income
 - Section 5 determines a range of income based on residential status of a person.
 - Section 14 classifies income under various heads
 - Section 15 to 59 quantify income along with certain charging sections enumerating conditions to be fulfilled to fall under each head of income.

- Section 14 assumes utmost relevance since it provides for each head appropriate rules for computation of income which are unique by themselves and defer from one head to another head.
 - **Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. CIT- [1997] 227 ITR 172 (SC)**
 - **CIT vs. Banque Nationale De Paris[1997] 225 ITR 1 (SC)**

- All heads are mutually exclusive with certain parameters to be complied with. It is well settled that a particular income attributable to a particular head of income must only be taxed therein and cannot be brought to tax under a different head for any reason.
 - **Nalinikant Ambalal Mody vs. S.A.L. Narayan Row [1966] 61 ITR 428 (SC)**
 - **CIT vs. D.P. Sandu Bros. Chembur (P.) Ltd.- [2005] 273 ITR 1 (SC)**

