

Definitional and Interpretational Approach towards Economic Development on the Word 'Income' under Current Laws of Income Tax: A Comparison of Sri Lanka and India

RPD Pathirana

Department of Commercial Law, Faculty of Law, University of Colombo

darshipathirana@gmail.com

Abstract- *The research paper looks at the vital role of income tax as a major income of the country and impact to the economic development, through the lens of interpretation. Hence, the primary aim of this paper is to set out the conceptual framework within the parameters of its definitions. The paper advances the argument that Sri Lanka should establish an inclusive taxpayer friendly approach definition to effectively address many issues relating to income tax law.*

Key Words- *Income, conceptual Framework, interpretational spheres*

I INTRODUCTION

In any legal context, definitions lay the foundation of its applicability and decide its scope. The judiciary through its interpretations has undertaken subsequent development. By the rules of interpretation, judges can widen its scope. Therefore, the paper addresses two sub research questions. Firstly, how have both jurisdictions defined the concept through countries legislations and Case Law jurisprudence? Secondly, this paper addresses the question that, the alterations that need to be interpreted to income tax law within these definitional and interpretational spheres.

II DEFINITION OF THE TERM ACROSS JURISDICTION

A. *The Common Law Jurisdiction: Both Sri Lanka and India are based on Common Law Principles.*

Firstly, it is necessary to examine the gradual development of the definition. The term 'income' in English is based on Common Law jurisdiction

developed for judges' interpretation. Towards the 19th century, judges formulated many rules identifying eight features that income must show. However, the main weakness of the English based concept of income is that it even excludes gains on the recognition of investment assets, but does not include unrealized changes in asset values.¹

Most strikingly, the definitions adopted by the authorities in relating to the word 'income' is far from clear and does not offer a precise definition.² In the leading case of *London County Council v Attorney General*³,

"The question was whether the Council was bound to account to the Crown for the whole of the Income Tax deducted from the dividend on Metropolitan Stock, or only for so much as was attributable to the sum raised by rates. That question was ultimately determined in favor of the Council after two adverse decisions. A further question has now arisen. The Council is the owners of property, which they occupy themselves and use for their statutory purposes. It is valued at £118,000 a year, and assessed at that value under Schedule A. Having paid Income Tax under Schedule A in respect of this property the Council claim to recoup them by retaining an equal amount out of so much of the Income Tax

¹ Kevin Holmes, *Supra* note 6, p 240

² *Ibid*

³ *London County Council v Attorney General* 1901 AC 26

deducted from the dividend on Metropolitan Stock as is attributable to the sum raised by rates.”⁴

Lord McNaughton has emphasized that, ‘Income tax, if I may be pardoned for saying so, is a tax on Income. Therefore, if an item of money is not income within the meaning of the act, it is not subject under the IRA. In addition, income tax is a tax on income and not a tax on anything else.’⁵

Emphasizing the uncertainty of the term; in the case of *Bond V Barrow Haematite Steel Co*⁶, Farewell J. stated that,

‘The word ‘income’ is of such elusive import that it cannot be defined in precise terms, which would adequately meet legislative requirements.’⁷

Arguably, the judge did not want to restrict the definition and he kept it as open to include wider scope. Therefore, it is observed that, there is indeed no concise and complete form of expression, which would adequately serve for taxation purpose.⁸

Judicial interpretations emerging from tax cases has unanimously pointed out that the term ‘income’ is used in the taxing statutes in its ordinary sense, except where it expressly extends or restricts that sense. In taxation, unlike in economics, the term ‘income’ has been much discussed by judges of eminence. ‘The definition of ‘income’ is not a term of art in the context of taxation.’⁹ Further, economists have divided the subject of income into two groups as flow of services from wealth and human beings and flow of commodities and services.¹⁰

In *Tenant v Smith*¹¹ where, in evaluating the concept of income, it was held that,

‘No doubt if the Appellant had to find lodgings for himself he might have to pay for them. His income goes further because he is relieved from that expense. However, a person is chargeable for Income Tax under Schedule D, as well as under Schedule E., not on what saves his pocket, but on what goes into his bank brings in nothing which can be reckoned up as a receipt, or properly described as income.’¹²

In *AG of British Columbia V Ostrum*, the Privy Council held that, there is no way to cutting down the general and plain meaning of the word income. That was the argument established by the court with regard to this case.¹³

In addition,

‘The expression was intended to include, and does include, ‘all gains and profits derived from personal exertions, whether such gains and profits are fixed or fluctuating, certain or precarious, whatever may be the principle or basis of calculation.’¹⁴

Further, in *Vander Berghs Ltd V Clark*¹⁵ and Lord Macmillan the Court held that,

The income tax Acts nowhere define ‘income any more than they define ‘capital’, they describe sources of income and prescribe methods of computing income, but what constitutes income they discreetly refrain from saying.’¹⁶

The decision in every case seeks to answer the question on income and sometimes ended by deciding what not income is. When the nature of a receipt is not explicit, in the absence of a comprehensive definition, the true nature of the receipt has to be ascertained by reference to principles laid down in decided cases to distinguish income from capital. There is no

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⁵ Ibid

⁶ *Bond V Barrow Haematite Steel Co* 1902 – 1Ch 353

⁷ Ibid

⁸ Ibid

⁹ A term of art has a particular meaning in its own special context.

¹⁰ William Hewett, *The Definition of Income*, (vol15, American E.R.,1925)

¹¹ *Tenant v Smith* 1892, 3TC 158

¹² Ibid

¹³ *AG of British Columbia V Ostrum* 12 TC 586

¹⁴ Ibid

¹⁵ *Vander Berghs Ltd V Clark* (1935) UKHL TC_19_390

¹⁶ Ibid

simple definition of the words profits, which will fit all cases.¹⁷

The income tax is a tax on income, which from various sources, estimated according to sets of *pocket and the benefit which the appellant derives from having a rent-free house provided for him by the rules*.¹⁸ There are three types of income; 'Namely, Personal service, property and trade, profession or vocation.'¹⁹ According to the meanings, labour defines as, 'personnel labour salary or wages' the second represents income from 'capital' alone and the third category combines both 'capital' and 'labour'. These categories are helping to assess the income easily.²⁰

*"The income tax, 'whatever way it is charged, is however, one tax. In every case, the tax is a tax on income, whatever may be the standard by which the income is measured under different heads."*²¹

Decided cases suggest that, it is to the decided cases that one must go in search of light, while some case is found to turn upon its own facts. On that point is no reliable criterion emerges, even so the decisions are useful as illustrations. The concept of income is a very wide and vague term, which has been covered in all other concepts of Income Tax law alone.²²

A Comparison of the Definition of 'Income' Under Both Legislations

¹⁷ It should be distinguished from the term 'capital' as illuminated by Pitney J in the American case of *Eichon v McComber*. 1919, 252 U.S. 189, at 206-207-"The

fundamental relation of capital to income has been much discussed by economists. The former (Capital) Being likened to a tree on the land, and the latter (income) to the fruits or crop"

¹⁸ Manukriti Nandwa, "Top Three Concepts of Income (With Measurement" <http://www.accountingnotes.net/financial-statement/income-concepts/top-3-concepts-of-income-with-measurement/5302> accessed on 04 -05 -2016

¹⁹ Ibid

²⁰ Definition of All-Inclusive Income Concept', <https://www.investopedia.com/terms/a/all-inclusive-income-concept.asp>. Accessed on 04 -05 -2016

²¹ Ibid

²² *Lord Macmillan in Vander Berghs Ltd V Clark* 19 TC 390

The Sri Lankan Context

The 2017 Act of Sri Lanka does not define the word Income. Accordingly, the interpretation section 217 of the 2006 Act provides a definition to the term 'income' as 'profits or income'.²³ Similarly, the 2017 Act does not present the proper definition under the interpretation section, but enumerate sources under section five to section eight.

Accordingly, it is significant to identify that, section 3 of the 2006 Act and sections 5, to 8 of the 2017 Act stipulate a source – based approach; income chargeable to tax. However, these illuminations have been further illustrated in the next chapters of the thesis. The sources of income include in the above- mentioned sections of the both Sri Lankan 2006 Act and 2017 Act. They are only the income from any of these sources that can be charged to income tax.²⁴ The above sections do not attempt to define the 'income', but has stated the characteristics of each source.²⁵ The lists are not an exclusive list and provide a precise answer to concept of income in this regard. However, both the acts do not provide a wide and a precise definition of income alone.²⁶ Therefore, it is observed that, there is no definition of the words 'profits and Income' in the Sri Lankan Act, but only an enumeration of its sources, which is heads of income.

The Indian Context

In 1939, the Indian Income Tax Act defined the word 'income' under Section 6 (c) of section 2 of the 1922 Act for the first time. Later, the Finance Act, 1955, substituted the definition and its scope expanded. Further, the 1961 Act broadened the scope of this definition and develops the idea of the concept. According to the definition of 'income', 'it starts with the word

²³ Inland Revenue Act 2006, S. 217

²⁴ M.S.M.T. Samarasinghe, *The Main Principles of Income Taxation in Sri Lanka*, (a Stamford publication, 2013), Pp8- 10

²⁵ The Inland Revenue Act 2006, S. 3

Trade, business, profession, vacation and etc.

²⁶ Cecil Aluthwala, *A critical Appraisal of some Aspects of Income Tax*, (A Stamford Lake Publication, 2011), Pp 3-5

'includes'.²⁷ Therefore, the list is considered as an inclusive list. The reception of this principle in Indian Law is illustrated by the section 2 (24). The part of the definition is reproduced below.

"The Section 2 (24) "income" includes-(i) Profits and gains; (ii) Dividend (ii) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes [or by an association or institution referred to in clause."'²⁸

It merely enumerates certain items, 'some of which cannot ordinarily be considered as income but are statutorily to be treated as such.'²⁹ The expression of income does not in the context of the Income Tax Act 1961, 'mean only realisation of monetary benefit. Therefore, the definition of 'income' under the above section being an inclusive definition, the meaning of the word 'income' is undoubtedly very wide.'³⁰ Whether a particular type of receipt is income or not has to be decided having due regard to the nature of the receipt by applying the relevant test. Thus, in Indian context, the well settled concepts, interpretations and meanings have been identified after the evaluation of Indian Income Tax Law.³¹ The concept of income is broadly defined and interpreted by Section 2 (24).

'Hence, any kind of income earned by the assessee attracts income tax the point of earning and tax law is not concerned with how the income is expended.'³² The Act makes an obligation to pay tax on all income received. According to the Indian Act, income earned legally, as well as tainted income alike.'³³ Unless a particular

category has been specifically mentioned in the numerous clauses of Section 2 (24), the inclusive definition of 'income' will only include 'real income', that is, income, which has really accrued or arisen to the assessee.

The above provision, conferring to Indian Law, some of the broad aspects under the concept has been incorporated to the section.³⁴ The word 'income', 'in the context of the 1961 Act, is an expression of art, but even the Act does not attempt to define the term exhaustively.'³⁵ Arguably, the definition in Section 2

(24) of the Act can be considered as a comprehensive definition.

It is very important to consider the statutory interpretations for deep explanation as to follow the guidelines for Sri Lankan context. Sri Lanka does not

have such definitional approach on the concept. It is well established that under the Indian Law, the concept of income is an inclusive definition and not an exhaustive definition. It is important to perceive through case interpretations why it should be exhaustive.

C. Explore the Concept under the Case Law Jurisprudence: An Interpretational Approach

Sri Lanka

Sri Lankan legislations has failed to provide a precise definition for the word 'income', which in long usage has made every one familiar with the ordinary meaning in Sri Lanka. The meaning given by usage is sufficient in most cases to distinguish between income and capital. The

²⁷ The Income Tax Act 1961, Ss. 2 (24)

²⁸ Ibid

²⁹ Ibid

³⁰ Sukumar Bhattacharya, *Indian Income Tax Law and Practice*, (18thedn. Indian Law House, New Delhi, 1995- 96), 1-3

³¹ S Narayanam, 'The Literal Rule revisited', (2013), vol 262, Current T.R., 57 -64

³² Thomas Piketty & Nancy Qian, 'Income Inequality and Progressive Income Taxation in China and India 1986- 2015', (2009), vol 63, American E.J., 53 -62

³³ *CITV Thangamani* 309 ITR 15

³⁴ "Income is a periodical monetary return with some sort of regularity. It may be recurring in nature. It may be broadly defined as the true increase in the amount of wealth which comes to a person during a fixed period of time". Kanga & Palkiwala, *The Law and Practice of Income Tax*, Arvind P. Datar (ed) (10thedn, Sanat Printers, Haryana, 2014),

³⁵ Ibid

difficulty of definition is apparent from the classification of profits and income under the sources of the Inland Revenue Act. Therefore, with regard to the Sri Lankan Law, profits and income for the purpose of tax is not conterminous with the ordinary meaning of profits and income.³⁶

Moreover, the decisions in every case Sri Lanka seeks to answer the question, what is income and sometimes ended by deciding what is not an income is. Therefore, most receipts are readily identifiable as being either the receipt of income or receipt of capital. Nevertheless, differentiation of income from capital by definition is difficult. Therefore, a receipt is of an income or capital nature has to be answered after considering all the relevant facts.³⁷ Consequently, when the nature of a receipt is not explicit in the absence of a comprehensive definition, the true nature of the receipt has to be ascertained by reference to principles laid down in decided cases to distinguish income from capital.

Furthermore, profits and income are used intermixed but are not synonymous. Profits have its antithesis. There can be a loss instead of profit. Therefore, the difference between income and source of income assumes importance when tax is charged income.

In the Supreme Court case of *Thornhillv Commissioner of Income Tax*, 'was a case stated for the opinion of the Supreme Court by the Board of Review constituted under the Income Tax Ordinance.'³⁸

According to facts, as stated, are as follows,

"The appellant was assessed under the Income Tax Ordinance for the year of assessment 1937-38 as being liable to pay a tax of Rs. 5,258.16 on a taxable income assessed at Rs. 19,159. The appellant claimed an allowance of Rs. 8,893 being the amount of the depreciation in the value of the

buildings on his tea estates as being deductible in computing his income, which is liable to taxation. The Assessor refused to allow the deduction, which was claimed. The appellant appealed to the Commissioner of Income Tax who upheld the assessment of the Assessor and refused the deduction for the 'reasons given.'"³⁹

Soertz J opined that,

*'when ascertaining the profits or income of any person from any source by deducting all outgoings and expenses incurred in the production thereof, no allowance can be made in respect of premises such as a tea-factory building employed in producing income, for depreciation by wear and tear. Therefore, no allowance can be made in respect of premises such as a tea factory building employed in producing income for depreciation by wear and tear.'*⁴⁰

In *Commissioner Inland Revenue V Tea Propaganda Board*⁴¹,

"The Tea Propaganda Board money was mainly derived from monthly contributions from the Principal Collector of customs out of the special export duty levied on tea exports under Tea Propaganda Ordinance. At the hearing before the Supreme Court, it was held that the Tea Propaganda Board was not a 'Governmental Institution' within the meaning of 'income' under Income Tax Ordinance. Several non – Governmental institutions received assistance from the Government and the contributions from the Customs Export Duties. The Tea Propaganda Ordinance did not make the Tea Propaganda Board a Government undertaking and it was not liable to exemption under Income Tax Ordinance. The receipts from the export duty were not 'profits' within the meaning of Income Tax Ordinance. They

³⁶ E. Goonaratne, *Supra* note 193, p 14

³⁷ *Ibid*

³⁸ *Thornhillv Commissioner of Income Tax* CTC Vol. 1 (1940)

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ *Commissioner Inland Revenue V Tea Propaganda Board* 3 Cey TC 213

were not an advantage or pecuniary gain from business carried on by the Board.”⁴²

The question was to answer whether the contribution made by the government to the funds of the Board was assessable to tax as profits of business. The decision of the Court was that the contribution by the government was a receipt of income of the Board but not a profit of business.

In *Commissioner of Income Tax V J. Cowasjee Nilgiriya*⁴³

“The respondent assessee, who was a partner in a firm of architects in terms of the partnership agreements purchased the deceased partner’s share from his widow for a sum of Rs. 106,000. Provision was made, however, for monthly instalments of \$ 50, which in the aggregate would almost amount to the purchase price. The instalments were to be paid only for a period 13 years. There were also other variations, such as the firm ceased to carry on business or if the assessee – respondent ceased to be a partner in either event for reasons beyond his control his liability was to terminate. The assessee respondent had been assessed to Income Tax and Profits Tax and claimed the payment of \$ 600 per annum to the deceased partner’s widow as deductible ‘annuities’ within the meaning of the Income Tax Ordinance and the Profits Tax Act.”⁴⁴

Therefore, the above payment was not an ‘annuity’ under definition of income of the Income Tax but was of a Capital nature and therefore not deductible.

In *V.N. Shockalingam Chettiar V A.K.R. Karuppan Chettiar*⁴⁵ *“The appellant and respondent, who are related to each other as father in law to son in law, owned an estate known as the Kalugala Estate in equal shares. The appellant was residing in India and only rarely visited Ceylon. The respondent was*

resident in Ceylon; he managed the estate and sent monthly accounts to the appellant. In 1956 the appellant and the respondent desired to terminate their association and following upon some discussions which took place in India between them, a written agreement was prepared and executed in Ceylon by an attorney for the appellant and by the respondent personally.”

The appellant was assessed to Ceylon Profits Tax in respect of his share of the estate for three years: each of these assessments related to the previous accounting year. He claimed that the respondent was liable to pay this sum under the terms of agreement. The respondent denied the claim contending that agreement was limited to income tax and did not extend to profits tax’⁴⁶

The Court held that, ‘they would have done the latter and that the omission to do so is consistent only with an intention that Profits tax should be covered. In view of the above discussion, several observations were made based on judicial interpretations in Sri Lanka.’⁴⁷

The Sri Lankan Inland Revenue Act does not define income and profit and it merely enumerates the sources of profits and income that is chargeable with income tax. In the absence of any definition of what is profit or income in the Act, the principles to be adopted ‘must be considered according to the general concepts and meanings. Commercial principles and practices and accounting standards will be applied subject to the over application of the tax law.

India

Comparatively, number of cases in Indian law illustrates the phenomenon of interpreting the word Income. This part emphasized the significance of the definition through selected cases.

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ *V.N. Shockalingam Chettiar V A.K.R. Karuppan Chettiar*, privy Council Appeal No. 30 of 1964, S.C. 517 / 1960

⁴⁶ Ibid

⁴⁷ Ibid

The Supreme Court in *CIT V Karthikeyan (G.R.)* held that, 'the use of the inclusive definition is not to restrict the meaning only to widen its network.'⁴⁸

According to the case,

'The assessee participated in an All India Highway Motor Car Rally and on being declared a winner, received an amount of Rs. 22,000 as prize money. The Income-tax officer included the prize money in his income for the relevant assessment year relying upon the definition of 'income' in clause (24) of Section 2 of Income Tax Act. On an appeal

preferred by the respondent-assessee the Appellate Assistant Commissioner held that as the Rally was not a race, the prize money cannot be treated as income within the meaning of section 2(24) (ix). The Tribunal on an appeal by the Revenue held that the Rally was not a race and as it was a test of skill and endurance, it was not a 'game' within the meaning of Section 2 (24) (ix). The High Court on a reference at the instance of the Revenue, upholding the findings of the Tribunal, observed that the expression 'winnings' connotes money won by betting or gambling and therefore the prize money not represent 'winnings' Allowing the Appeal, the Court held that, the expression 'income' must be construed in its widest sense. The definition of 'income' is an inclusive one. Even if a receipt does not fall within sub-clause (ix) or any of the sub-clauses of Section 2

*(24) of the Act it may yet constitute income. The idea behind providing inclusive definition in Sec. 2(24) is not to limit its meaning but to widen its net.'*⁴⁹

The case emphasized that, 'this Court has repeatedly said that the word 'income' is of widest amplitude and that it must be given its natural and grammatical meaning. Hence, it partakes of the nature of income and the several

clauses therein are not exhaustive of the meaning of income.'⁵⁰

In *Navinchandra Mafatlal v CIT*⁵¹,

"The Supreme Court observed thus: What, then, is the ordinary, natural and grammatical meaning of the word income? According to the dictionary, it means a thing that comes in'. In the United States of America and in Australia both of which also are English speaking countries the word income is understood in a wide sense to include a capital gain. In each of these cases very wide meaning was ascribed to the word income 'as its natural meaning.

*Under the relevant observations of learned Judges deciding the case clearly indicate that such wide meaning was put upon the word income' not because of any particular legislative practice either in the United States or in the Commonwealth of Australia but because such was the normal concept and connotation of the ordinary English word income. Its natural meaning embraces any profit or gain, which is actually received. The argument founded on an assumed legislative practice being thus out of the way, there can be no difficulty in applying its natural and grammatical meaning to the ordinary English word income. As already observed, the word should be given its widest connotation in view of the fact that it occurs in a legislative head conferring legislative power. Since the definition of income in Section 2(24) is an inclusive one, its ambit should be the same as that of the word income occurring in Entry 82 of List I of the Seventh Schedule to the Constitution."*⁵²

In another decided case the Court held that, 'the full scope of the expression should not be limited to the technical concept of income in contradiction to capital as understood in the Income Tax Act. It is important to highlight that all receipts are not assessable to tax. The income tax authorities cannot assess all receipts; they can assess only those receipts that amount to income.

⁴⁸ *CIT V Karthikeyan (G.R.)* (1993) AIR 1671, (1993) SCR (3) 328

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ *Navinchandra Mafatlal v. CIT*, AIR (1955) SC 58.

⁵² Ibid

Therefore, before they assess a receipt, they must find that to be income. They cannot find so unless they have some material to justify their finding.⁵³

The profits and gains chargeable to tax under the Act are those which have been either received by the assessee or have accrued to the assessee during the period between the first and the last day of the year of account and are receivable. Income received or income accrued is both chargeable to tax. It can be concluded that whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation.⁵⁴

The main process is to follow for being understood to that matter should comprehend the judgments, which has already explained the concept. The word income is wide and vague in its scope. It is a word of elastic import and its extent and sweep are not controlled or limited by the use of words “profits and gains”. The Court reiterated very clearly by the cases mentioned above.

It is expanded, no doubt, into income profits and gains but the expansion is more a matter of words than of substance. “The word “income” is of the widest amplitude and it must be given its natural and grammatical meaning.⁵⁵ It is very clearly understood that, the word “Income” is very difficult to define than other concepts after researching number of cases. Thus, there is no doubt that the existence of the concept is an essential requirement and that this requirement has been received in the Indian Jurisdiction. It might still be income, if it partakes of the nature of income. Income is not restricted to the classes of receipts mentioned in the definition but also includes in its ambit the meaning of the terms as generally understood.⁵⁶

Further, in *Emil Webber V CIT*⁵⁷, the Supreme Court held that,

“The definition of ‘Income’ in clause (24) of Section 2 of the Act 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. 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.”⁵⁸

‘However, the inclusive definition adds several artificial categories to the concept of Income but on that accounts, the expression “income” does not lose its natural connotation. This decision makes sense, as it is obvious. It has been held that the *Terminology* used by the parties in describing a particular receipt as income or otherwise in their correspondence or the treatment by the parties in their accounts of the receipts as income receipts, though helpful, is not decisive of the character of the receipt.⁵⁹

Whether a particular type of receipt is income or not has to be decided having due regard to the nature of the receipt by applying the relevant test. Nevertheless, ‘anything, which can properly be described as income, is taxable under the Indian Act unless expressly exempted.’⁶⁰

⁵⁷ *Emil Webber V CIT* (1993) 200 ITR 483

⁵⁸ *Ibid*

⁵⁹ *Ibid*

⁶⁰ In *Rani AmritKunwar v CIT*, (1946) 14 ITR 561 (All) (FB) Braund, J. observed that the simple test is whether in the ordinary parlance of language what the assessee receives is “income” or not. One cannot dream of suggesting that every payment made by one person to another is necessarily, the recipient’s income, since it may be as Viscount Dunedin said in *Maharajkumar Gopal Saran Narain Singh v CIT*, (1935) 3 ITR 237 (PC), merely a casual payment or as Sir George Lowndes

⁵³ *Lal Chand Gopal Das V CIT* (1963) 48 ITR 324 (India)

⁵⁴ *Ibid*

⁵⁵ *Ibid*

⁵⁶ Girish Ahuja & Ravi Gupta, *A Compendium Of Issues On Income Tax And Wealth Tax*, (7th edn, Bharat Law House Pvt Ltd, New Delhi 2015), Pp 25 -30

It is mentioned that, 'the Act does not provide that whatever a person receives must be regarded as income liable to tax.'⁶¹It may be mentioned here that Section 10 of the Act enlists certain items, which are not includible in the total income of the recipient. The fact that a specified receipt is shown as exempt from income – tax may *prima facie* indicate that it is income, but it is not inclusive.⁶²

In *Diwan Rahul Nanda vs. Deputy Commissioner of Income Tax*⁶³, stated that

*"Any kind of benefit or perquisite given by the company which enriches the pocket of the director or person having substantial interest in the company is included in his taxable income with regard to the Section 2(24) of the Act. However, it is further applicable on the situations when the benefit or perquisite is directly enjoyed by the individuals referred in the said provision and for those situations when sum is paid by the company to a third person."*⁶⁴

Moreover, Section 2(24) (IV) of the Income Tax Act, 1961, defines the term 'perquisite' under the definition of Income,

"It has been included the value of any benefit or perquisite, which convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company. Further, it has been incorporated that a relative of the director or such person, and any sum paid by any such company in respect of any

obligation, which has paid by the director or other person.'⁶⁵

Moreover, the section 2 (24) of the Act is a complete definition and it merely enumerates, 'certain items, some of which cannot ordinarily be considered as income but are statutorily to be treated as such.'⁶⁶Moving on to the other terms used in Section 4, the term "income" has been defined in the Act in section 2(24). Instead, income has been defined as *including* a number of enumerated items such as profits and gains, dividend, the value of perquisites, capital gains, winnings from lotteries, and sums received under insurance policies. The 1961 Act has included some very specific matters in the definition of income, when it is after all an inclusive definition. The reason perhaps is to avoid any future litigation over whether these items are income or not. That apart, the courts have liberally construed the concept of income and always followed this thumb rule: if anyone has earned it, it is income. Be assured that whatever comes into hands because of the sweat of your brow or the application of your multifarious talents, it is going to be considered as income. A number of cases illustrate the phenomenon of interpreting of concept of income within the income definition.⁶⁷

However, the research concluded that Indian law has defined the concept of income in an inclusive way under the section 2 (24).

Analysis

Chapter three discussed the concept of income under both countries perspectives. The profits or income under the income tax is the net profits and income calculated in accordance with the provisions imposed by the Inland Revenue Act of

suggested in the same case, a mere windfall. Such a sweeping proposition would be absurd. Many things have to be considered. Sukumar Bhattacharya, *Indian Income Tax Law And Practice*, (18thedn. Indian Law House, New Delhi, 1995- 96), Pp 1-3

⁶¹ Chaturvedi and Pithisaria, *Income Tax Law*, Vol 5 (7thedn, 2004), Pp66 -67

⁶² Ibid

⁶³ *Diwan Rahul Nanda Vs. Deputy Commissioner of Income Tax*, [2008] 25 SOT 454 (Mum) at para 14.

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Income Tax Act 1961, Ss. 2 (24)

⁶⁷ Ibid

Sri Lanka and by applying the legal and commercial principles and practices.

The Sri Lankan Inland Revenue Act does not define income and profit and it merely enumerates the sources of profits and income that is chargeable with income tax. In the absence of any definition of what is profit or income in the Act, the principles to be adopted 'must be determined in accordance with the ordinary concepts.'

The research identified that, the Indian Income Tax Act attempts to provide an inclusive definition under section 2 (24). 'Section 2 (24) of the Indian Act starts with the words 'income includes' and any kind of the income earned by the assessee attracts income tax at the point of earning and tax law is not concerned with how the income is expended. The Act makes an obligation to pay tax on all income received. The Act considers income earned legally as well as tainted income alike. Anything which can be properly described as income is taxable under the Act unless exempt under one or the other provisions of the Act.'

The Indian Income Tax Law has given a wide scope and interpretations through the Act and case law jurisprudence on the area of concept of income, compared to Sri Lankan Income Tax Law. All parties who are interested in the income tax would be able to get different perspectives and concerns with relating to such explanations. It should be given its widest connotation in view of the fact that it occurs in a legislative head conferring legislative power. It is not the gross receipt but only the net receipts arrived at after deducting the related expenses incurred in connection with earning such receipts, which are made the basis of taxation under the Indian Law.

Hence, under the Income tax Act, 1961 the word income has been comprehensively defined, though in an inclusive way. Therefore it is important to recommend that, Sri Lankan law should be amended with a section similar to 2(24) of Indian Act. Moreover, the section 2(24)

is more systematically drafted and is far wider in scope than the Sri Lankan context. Indeed, income is artificially defined to include various items. Any kind of income earned by the assessee attracts income tax at the point of earning and tax law is not concerned with how the income is expended. The latter are statutorily fixed for a specified purpose. An analysis and judgement of the facts of the cases would help to determine the different aspects of the concept of income, the situation of improvement was involved in those cases, and how the Courts dealt with them. Most importantly, neither the English Law, on which the Sri Lanka's tax law has largely relied, nor the authorities from most other jurisdictions provide a precise answer to concept of income in this regard.

This confusion could result in vagueness and can have different meanings and interpretations at different times. Since the term 'income' is not defined in the Act, one has to rely on its ordinary meaning as used in society and render it accordingly. Yet, in keeping this confusion in mind, one should realize that this definition in the Act and dictionaries is adequate to recognize the term 'income'. Therefore, it is noteworthy to follow the Indian cases and their interpretations for determine the different aspects.

D. the Summary of the paper

This paper emphasized that Sri Lankan law does not define income but it merely enumerates the sources of profits and income that is chargeable with income tax. In the absence of any definition of what is profit or income in the Act, the principles to be adopted 'must be determined in accordance with the ordinary concepts.'

The research identified that, the Indian Income Tax Act attempts to provide an inclusive definition under section 2 (24). With regard to the cases decided under Indian Income Tax Law,

the word 'Income' has given its ordinary, natural and grammatical meaning.