



The Judiciary in Bangladesh Taxation System

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Introduction

Bangladesh is a developing country with a population of around 160 million. It is a country which is prone to flood and cyclone each year. Currently, it has come to global limelight with the Rohingya refugee issue. Despite such adverse effects, the country did not set behind its goals, and have progressed in many ways. As a matter of fact, we have set global benchmarks in many areas. We are very much self-dependent on our internal source of revenue and development budgets. In recent times, we are doing very well in revenue collection, and the Government is involving every stakeholder in this process. The key revenue sources are as follows:

Source	Fiscal Year 2016-2017	Fiscal Year 2015-2016	Relevant Act
Customs Duty	22,551.90	17,204.02	Customs Act
Income Tax	71,968.00	52,396.00	Income Tax Ordinance 1984
Value Added Tax (VAT)	25,725.29	19,651.96	VAT Act 1991
Others	82,906.80	60,748.02	Other Laws
Total	203,152.00	150,000.00	

All these are collected by the National Board of Revenue (NBR), which is the official authority to collect revenue under the Internal Resources of Division of the Ministry of Finance. The developed and the rapidly developing nations mainly depend on the internal revenue from Income Tax and VAT. The figures confirm the positive correlation between the national budget side and the revenue collected from these sources. The above figures indicate this.

Customs duty is a type of tariff barrier and is discouraged in a free economy concept.

VAT is a consumption tax and has been effective in Bangladesh since 1991. It is indirect in nature and is neutral to income size or wealth. A substantial volume of Government revenue comes from VAT.

Income tax on the other hand is very progressive and direct in nature. We are practicing it from the early British days. However, we have experienced a structured revenue collection system. The British Government introduced Income Tax Act in the 1860s and has made many amendments till 1922. The key

objectives of the said acts were to collect maximum revenue from the assessee.

From 1860s till 1941, the Central British Government received many appeals from aggrieved assesses against the judgments of Assessment Officers. They were looking for solutions and have taken some initiatives through administrative restructuring of the Taxation Authority. But it did not work.

A committee for investigation of the Indian Income-tax system, consisting of M/s. C. W. Ayres and S. R. Chambers of the Board of Inland Revenue of the United Kingdom and Khan Bahadur J.B. Vachha Commissioner of Income-tax, Bombay, was constituted. Their report gave birth to the idea of setting up the **Income-Tax Appellate Tribunal** and it was first mooted in the Income-tax Enquiry Report, 1936.

Emergence of Taxes Appellate Tribunal in the Sub-Continent

Emergence of Tax Appellate Tribunal in British Period

In pursuance of the recommendations made by the committee, the legislature introduced chapter II-A (Section 5A) in the Income Tax Act in 1941 and 25th January 1941 was notified as the appointed date on which the Tribunal came into being.

Emergence of Tax Appellate Tribunal in India

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 1961, there is no fundamental change either in the constitution or in the functions of the Tribunal as a result of the new Income Tax Act.

Emergence of Taxes Appellate in Pakistan

For the first time, one of the benches of Taxes Appellate Tribunal of Pakistan (HQ-Karachi) was established in Dhaka in 1955.

Emergence of Taxes Appellate in Bangladesh

After independence, Taxes Appellate Tribunal with a bench in Dhaka was established in 1972. Now, there are 7 division benches in Taxes Appellate Tribunal. Out

of them, 5 are situated in Dhaka, one in Chittagong and one in Khulna. Every bench constitutes of 2 members and they give their decision jointly. The Government appoints one of the members of NBR as the President of Taxes Appellate Tribunal.

Independent Functioning of Taxes Appellate Tribunal

In Charge of Taxes Appellate Tribunal in India

Initially the Finance Department of the Government of India (the Central Board of Revenue) was initially in charge of the Appellate Tribunal. However, from 30th May, 1942, on opposition in public opinion, the Tribunal was put in charge of the Legislative Department, which is the predecessor of the present Ministry of Law and Justice of the Government of India. Tribunal did perform judicial function and it is court subordinate to the High Court. Rajasthan High Court has equated the Tribunal members of judicial services with District Judges. Tax assessment and collection and judicial service to the assessee is done independently.

In Charge of Taxes Appellate Tribunal in Bangladesh

The Taxes Appellate Tribunal is established under Internal Resource Department (IRD) of Ministry of Finance subject to the Provision of Chapter –III of IT Ordinance 1984. The Secretary of IRD is heading the Chairman of National Board of Revenue (NBR). National Board of Revenue is the tax collecting agency, assessing taxes, for the Government. So Tax assessment and collection and Judiciary service to the assessee is done by the same department or even the same official. It creates the question of independence of the Tribunal and its verdict also.

Bangladesh Taxes Appellate Tribunal Scenario

Chapter III-Taxes Appellate Tribunal of Income tax ordinance 1984 consists of Section 11-15 which addresses the formation and management of the Taxes Appellate Tribunal. It has gone through 12 changes since 1984 by different Finance Acts.

The Income Tax Ordinance 1984 initially imposed appointment of a judiciary and an accountant

member, along with a President of the Tribunal, but this was omitted by the Finance Act 2002. Currently this clause is not mandatory. Present and retired Members of the NBR may be appointed as a member of the Tribunal as per the Finance Act 2009. Present Commissioner of Taxes with one year experience is also eligible to be member of the Taxes Appellate Tribunal subject to provision of Finance Act 2016.

Presently there are 7 (Seven) benches consisting of 14 (Fourteen) members of Taxes Tribunal. They are discharging judiciary services to the aggrieved assesses through their tax assessment processes. But out of these 14 members there are none from Judiciary or none is an Accountant member. Given the provision of Section 11, ITO 1984, it raises a question of judgment from a legal standpoint. The current members are all acting or retired Commissioner or Member of NBR. Some of them have been in commissioner positions back in their days and as assessing officers before that. So the Commissioners are discharging the Judiciary and Accounting service for the aggrieved assessee in the same tenor of commissionership. On the other hand, private tax practicing is prohibited for income tax officers for some specific period after their retirement from service.

It seems that we are going back to British oppression period of the early 1860s. With regards to judiciary, we are just creating an oppression net in this free country for us. In the early British Period, Tax was assessed by a panchayat and an assessed 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.

There was thus no independent forum for redress of the aggrieved assesses under the Income Tax Acts. Civil Courts of the land were prohibited by Section 67 of the Indian Income-tax Act to entertain litigation in tax matters and the broad interpretation of this prohibition by the Privy Council in the Raleigh Investment Co.'s cases. Further section 226 of the Government of India Act, 1935 specifically forbade interference in revenue matters by High Courts in exercise of their original jurisdiction. The scope of judicial review in tax matters was thus very limited. This perhaps gave birth to the wide-spread desire of the tax payers for an appeal to an independent body on important questions of fact not only Law. Finally it gives birth to the Taxes Tribunal in this subcontinent in 1941 as easy solution for aggrieved assessee.

Independent Judiciary in all respect is essential for development of Democracy and also development of the Economy. It is a key issue of our equality and independence. We fought for it. I request regulators to please place the tax tribunal under the jurisdiction of the Ministry of Law, Justice and Parliamentary Affairs, as it is being currently practiced in India for the last 74 years (detailed information is available in the website www.itat.gov.in). We can also practice it in all the tribunals under Customs Act and VAT Act. 

We have set global benchmarks in many areas. We are very much self-dependent on our internal source of revenue and development budgets. In recent times, we are doing very well in revenue collection, and the Government is involving every stakeholder in this process.

References

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