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TAXATION LAWS IN INDIA

~ *Ansh Pal Singh*

“On a lighter note, it is said that human cannot escape death and tax” – Anonymous

ABSTRACT

To understand the Taxation laws in India it is paramount to comprehend the Taxation system that prevails in India. Taxation refers to the mandatory levies on individuals or more specifically in Indian context on persons as per the Income Tax Act, 1961. The practice of levying taxes is common in every region and part of the world since it is crucial to generate revenue for the government expenditures and public welfare. Tax law on the other hand, is used as an instrument to impose these taxes onto the people. It acts as a medium. Therefore, providing a legislative backing to the practice of levying taxes. The tax laws in India form a comprehensive framework designed to facilitate the collection of revenue for the government, hence, the tax laws in India are governed by The Central Government, State Governments and some minor tax laws are also overseen by the local authorities. Recent developments in India tax laws focus on digitalization and transparency, with measures like faceless assessments and appeals and the introduction of e-invoicing system under GST to curb tax evasion. Despite these advancements, the Indian tax system faces challenges such as complexity and compliance burden, prompting ongoing reforms to enhance efficiency and taxpayer convenience. India tax laws encompass a wide array of regulations that govern the taxation of income, corporate profits, and goods and services, with an evolving focus on modernization and simplification to support economic growth and equitable revenue collection.

INTRODUCTION

Indian Tax System formulates as one of the most complex tax systems in the world.¹ Reasoning to that lies in the governing and administrating of the various tax laws in the country. Like other nations, India's taxes are also divided into Direct taxes and Indirect taxes. Direct Taxes in India were regulated by two principal legislations, Income Tax Act, 1961 and Wealth Tax Act of 1957. A new statute, The Direct Taxes Code (DTC), was proposed to supersede these two acts. However, the proposal for the DTC was abandoned following the repeal of the Wealth Tax Act in 2015², with that regard the major legislation governing and regulating the direct taxes in India remains the Income Tax Act, 1961. Additionally, the tax system incorporates various tax incentives and rebates to promote investment and economic development, such as deductions under Section 80C for investments in specified financial instruments. Tax administration in India is handled by the Central Board of Direct Taxes (CBDT) and the Central Board of Indirect Taxes and Customs (CBIC), ensuring effective tax collection and enforcement.

DIRECT TAXES

Direct Taxes in India pertains to the taxes which are directly levied on the people of India, which further lays down the idea that this does not include intermediaries. Moreover, Direct taxes are highly discriminative towards the income earned per capita, higher the income, higher will be the taxes and vice versa. The most common example of Direct Taxes in India is Income tax which is legislated by the Income Tax Act of 1961. India follows a Marginal Tax Rate System.³ Which further facilitates the fact that the people in India will only be levied taxes upon their taxable income. i.e., the income which goes above their respective tax brackets. In India, any person who is earning below 2.5L per annum is not levied with income tax. Direct taxes also incorporate Tax Deducted at Source (TDS) which specifically pertains to salaried employees, their receivable income is post tax deduction which takes place at the time of the transaction. Direct taxes also include Capital Tax Gains, which implies that idea of taxation on the profits earned by individuals with respect to the capital owned by them, the increment in the value of the capital is taxed.

¹ The Hindu Business Line, "India is second-most complex tax jurisdictions: Deloitte," The Hindu Business Line (June 1, 2017), <https://www.thehindubusinessline.com/economy/india-is-second-most-complex-tax-jurisdiction-deloitte/article9714344.ece>

² The Finance Express, "Economy: Govt kicks off Direct Tax Codes revision," The Financial Express (September 26, 2022), <https://www.financialexpress.com/policy/economy-govt-kicks-off-direct-tax-code-revision-3461547/>

³ "Marginal Tax Rate," Merriam-Webster, (accessed June 8, 2024) <https://www.merriam-webster.com/dictionary/marginal%20tax%20rate>

INDIRECT TAXES

Indirect taxes as the name suggests, are levied indirectly, and is levied on consumption specifically related to the good and services (GST). It also includes taxes on custom duties and excise duties. The GST, implemented in 2017, is a significant reform that subsumed various indirect taxes into a unified tax structure, simplifying compliance and eliminating cascading effects. The Customs Act, 1962, and the Central Excise Act 1944, regulate customs and excise duties, respectively, overseeing the import and export of good and the manufacture of excisable goods. For businesses, it is more complex to comply with the indirect taxes, ultimately it is the end consumers who pay for GST, which is initially collected by the businesses and is not withheld the businesses or firms but is further facilitated to the Government which is further used for public expenditure. GST specifically is non – discriminatory towards the per capita income, as it is goods and service driven unlike income tax which is income driven which implies that it is a standard tax for everyone which will only differ from goods to goods or from service to service. The GST slabs in India are bifurcated into a percentile system into 0%, 5%,12%,18% and 28%. The GST slabs are less and to some extent non existent for certain goods which are considered essentials. On the other hand, the goods which are considered to be sin and luxury will have higher GST slabs. This provides a fair mechanism to the indirect taxes.

OBJECTIVE OF INCOME TAX ACT, 1961

Imposing tax directly on the income of the people and further generating revenue for the good of the public through public expenditure. The Income Tax Act contributes to price stability through its prescribed rules and regulations. It regulates private expenditure and monitors inflation, leading to reduced product prices and increased demand, thereby fostering employment opportunities. The progressive taxation system mitigates wealth inequality among citizens. Income tax rates adjust according to the economic conditions, aiding in managing fluctuations in currency value. Additionally, the imposition of import duty promotes domestic production and supports local manufacturers in competing effectively.

POWER OF THE CENTRAL GOVERNMENT TO LEVY TAXES

Schedule VII of the Indian Constitution provides the Union List entry 82 of which has given power to the central government to levy a tax on any income other than agricultural income, which is defined in Section 10(1) of the Income Tax Act, 1961. Further Article 265 of the Indian Constitution provides that no tax shall be levied or collected except by the authority of law

through the way of legislation. Article 270 of the Indian Constitution also provides that the Central Government can impose Cess and Surcharge which shall be distributed between the Union and the States. Cess refers to a Tax or a fee imposed for a specific purpose, such as Research and Development or Education, which cannot be used for any other purpose except the specific purpose for which the tax is levied on the people. A surcharge is an extra income tax to be paid by the taxpayers earning a higher income. Article 271 provides that the centre may at any time increase the taxes and duties by a surcharge for its own purpose which would form a consolidated fund of India which can be spent for any purpose.

WHO IS BOUND TO PAY TAXES?

Section 4 of the Income Tax Act, 1961 provides that every person whose total income exceeds the maximum amount not chargeable to tax, shall be chargeable to it at the rate or rates prescribed by the act. Further, Section 2(31) of the Income Tax Act defines person as:

- Individuals
- Hindu Undivided Family (HUF)
- Company
- Firm
- Association of Persons (AOP) or Body of Individuals (BOI)
- Local authorities

AMIBIT OF INCOME

Income is a word difficult & impossible to define in any precise general formula.⁴ Although, Section 2(24) defines income vaguely and gives it an inclusive yet a non-exhaustive nature⁵ which further increases the ambit of income as to anything which is earned by an individual through any means. With respect to that it was facilitated that anything which can be properly described as income is taxable under the Income Tax Act, 1961.⁶ Through the years of 1972-73, the receipts of casual nature were exempted from tax. But after the commencement of the Finance Act of 1972, single transactions were also considered to be taxable.⁷

⁴ Kamakhya Naryan Singh v CIT, 1971 AIR 794

⁵ "Ejusdem Generis," The Law Dictionary, accessed 7th June, 2024) <https://thelawdictionary.org/ejusdem-generis/>

⁶ Maharaj kumar Gopal Saran Narain Singh v. CIT, AIR 1934 PATNA 384

⁷ CIT v. G.R. Karthikeyan, 1993 (3) SCC 222

ASSESSEE AND ITS TYPES

Section 2(7) of the Income Tax Act, 1961 defines Assessee as any person by whom any tax or any other sum of money is payable under this act. An Assessee can be classified into four main categories, namely;

- **Normal Assessee** who is taxed for the income earned by him in the Financial Year.
- **Representative Assessee** who is liable to pay for income or loss incurred by third party.
- **Deemed Assessee** to whom the responsibility is assigned by legal authorities, could be the eldest son or the executor.
- **Default Assessee** – An Assessee who fails to fulfil the statutory obligation to pay the taxes.

DIVERSION AND APPLICATION OF INCOME

Income never reaches to the assessee as his own income. By the virtue of obligation, the income is diverted at source before it reaches the assessee. Here, the obligation is on the source of income. A person or an entity having an overriding title leads to diversion of income. In case of diversion the income is not included in the income of the assessee. In case of Diversion of Income, the assessee is not entitled to the income, On the other hand, Application of Income is the opposite of it, where the assessee is already entitled to the income.⁸ As a result, Maintenance given out of one's own pocket is application of Income as it also acts as an obligation.⁹ Whereas, income distributed according to deeds or partnerships is diversion of income. Diversion or Application of Income may vary through change in facts, conditions, or circumstances.

REVENUE AND CAPITAL RECEIPTS

Revenue receipts are the receipts which includes day-to-day activities of a firm or a business. As a result, they are recurring in nature. A sale of good or a service is a good example of the same. Revenue Receipts directly affect the profits or loss of the firm as they are the source of cash flow to increase the total revenue.

Capital receipts are the receipts which include financial activities. As a result, they are non-recurring in nature. Capital receipts further create liabilities and do not have a regular source.

⁸ CIT v. Sunil J Kinariwala 2003, 1 SCC 634

⁹ CIT v. Sitaldas Tirathdas 1961, 2 SCR 634

CONCEPT OF SALAMI/PREMIUM

Salami refers to a single, non-refundable payment which prima facie is non-taxable but after the commencement of Salami, any income earned through the concerned medium is taxable. Salami is a single, non-recurring character, the payment of which is done prior to the creation of tenancy.¹⁰ It can also be defined as a single payment made for the acquisition of the right of the lessor by the lessee to enjoy the benefits granted to him by the lease. As Salami is prima facie non-taxable, the burden of proof to prove Salami as income is on the person or entity which is in the spirit of taxing salami as income.

ASSESSMENT OF INCOME FOR TAXATION

Section 3 of the Income Tax Act, 1961 defines the term “Previous Year” as the financial year immediately preceding the Assessment year. Assessment year refers to the year in which you are doing the assessment and filing of your income for any financial year which has passed by or just ended. Usually in the assessment year, the income of the previous year is assessed for initially their own evaluation and gradually for taxation. But there exist some circumstantial exceptions, where the income of previous year is assessed in the same year. These include:

- Income of non-resident shipping companies – Section 172 of the Income Tax Act, 1961
- Person leaving India – Section 174 of the Income Tax Act, 1961
- Bodies formed in short duration – Section 174A of the Income Tax Act, 1961
- Person trying to alienate their assets – Section 176 of the Income Tax Act, 1961
- Discontinued business or profession – Section 176(1) of the Income Tax Act, 1961

AGRICULTURAL INCOME

Sec 10(1) of the Income Tax Act provides that the Agricultural income is fully exempted from taxes except for the partially agricultural income which is mentioned in Rule 7 of the Income Tax Act, 1961. The extra income earned, which is considered as the non-agricultural income is taxable. This is also known as the Partial Integration Rule. For example, the income earned through the planting, cultivation and sale of tea is 60% Agricultural Income, which is non-taxable. Meanwhile, the other 40% of the income is non-agricultural income which is taxable.

¹⁰ Board of Agricultural Income Tax, Assam v Smt. Sindurani Chaudhurani, AIR 1957 SC 739

But, to determine the character of any income one must consider the immediate and effective source.¹¹ It is pertinent to mention that the “land used for agricultural purpose” does not extend to forest of spontaneous growth i.e., those forests which are grown naturally. Moreover, Basic operations like Tilling, Sowing, Planting are necessary to establish Agricultural Operation, mere subsidiary activities like weeding, cutting, and guarding will not amount to agricultural activities.¹²

DEPENDENCY OF INCIDENCE OF TAXATION

Incidence of tax depends upon two things, i.e.,

- Nature of Income – Section 7-9 of Income Tax Act, 1961
- Residential Status – Section 6 of the Income Tax Act, 1961

NATURE OF THE INCOME

Nature of the Income is classified into Three types which are taxable under the Income Tax Act, 1961. namely;

- Income deemed to be received
- Dividend Income
- Income deemed to accrue or arise in India

RESIDENTIAL STATUS OF AN INDIVIDUAL

An Individual is said to be a resident to India if that person fulfils **any of the two** basic conditions as mention is Section 6(1)(a) and Section 6(1)(c) of the Income Tax Act, 1961. Since, it is only then that the provisions of the said act are applicable to the said person. These conditions are;

- If an individual has resided in India for 182 days or more in the Previous Year
- If an individual has resided in India for 60 days or more in the Previous Year and 365 days or more in the 4 Previous years.

¹¹ Bacha F. Guzdar v CIT, AIR 1955 SC.

¹² Cit v raja Benoy Kumar Sahas Roy, 1957, 32 ITR 466 SC.

An Individual is said to be a Resident and Ordinary Resident (ROR) if he fulfils both additional conditions and he is considered a Non-Ordinary Resident (NOR) if he fails to fulfil both conditions. Namely;

- If he is a resident of India for 2 years in 10 Previous years.
- If he is a resident of India for 739 days or more in 7 Previous Years.

RESIDENTIAL STATUS OF HINDU UNDIVIDED FAMILY

If the Control and Management of a Hindu Undivided Family is situated in India and is Totally/Partially done by a resident under the Income Tax Act, 1961, then the concerned Hindu Undivided Family will also be considered as a Resident under the act. Moreover, if the Karta of the said family is Resident and Ordinary Resident (ROR), the Hindu Undivided Family will also be considered as a Resident and Ordinary Resident (ROR) and vice versa. Whereas, if control and management is wholly situated outside of India then the Hindu Undivided Family is also considered as a Non-Resident.

RESIDENTIAL STATUS OF FIRM/ PARTNERSHIP FIRM/L.L.P.

The Residential Status of Association of Persons (AOP) and Body of Individuals (BOP) is the same as a Hindu Undivided Family (HUF). In the regard of AOP and BOP no further checking is done with respect to it being Resident Ordinary Resident (ROR) or a Non-Ordinary Resident (NOR). Since, no further checking is done, it is assumed that the concerned BOP or AOP is a resident and ordinary resident (ROR).

RESIDENTIAL STATUS OF A COMPANY

Section 6(3) of the Income Tax Act, 1961, provides two conditions, fulfilment of **any of the two** is necessary for a company to be a resident of India under the act, namely;

- If the company is Indian
- If the control and management of the company is situated wholly from India

A company is said to be a Non-resident if it is Controlled or managed wholly or partly outside of India.

RESIDENTIAL STATUS OF EVERY OTHER PERSON/BODY

The residential status of every other person/body is Indian, if its control and management is situated wholly in India. Meanwhile, if its control and management is situated wholly outside

of India, then it will be considered a non-resident. It is pertinent to mention that the words “Control and Management” refers to the controlling and directing power, i.e., the head and the brain. The word “situated” under the act refers to the place, and the words “wholly/partly” under this act refers to the situation of sole place or different places of directing, controlling and management.¹³

TAXATION UNDER THE UMBRELLA OF CUSTOMS ACT, 1962

The Customs Act, 1962, forms the cornerstone of India's customs law framework, governing the import and export of goods, and ensuring the levy and collection of customs duties. The Customs Act, 1962, establishes a detailed legal framework for the levying and collection of customs duties on goods imported into and exported from India. It ensures proper assessment, valuation, and timely collection of duties while providing mechanisms for provisional assessment, exemptions, refunds, and recovery. The Act also promotes transparency and certainty through self-assessment and advance ruling provisions. This framework is essential for safeguarding revenue, facilitating trade, and protecting domestic industries.

DUTIABLE GOODS (SECTION 12)

This section specifies that customs duties are levied on goods imported into or exported from India. The duties are charged at the rates prescribed in the Customs Tariff Act, 1975, or any other law for the time being in force.

VALUATION OF GOODS (SECTION 14)

The value of the goods for the purpose of levying customs duties is based on the transaction value, which is the price actually paid or payable for the goods when sold for export to India. The transaction value includes costs such as commission, brokerage, cost of containers, cost of packing, and charges for transportation, insurance, and handling up to the place of importation. If the transaction value cannot be determined, alternative methods such as the value of identical or similar goods, deductive value, computed value, or fallback method are used. The Transaction value method is the primary method for valuation, the only costs incurred up to the port of importation should be included in the assessable value. Post-importation costs are not to be included.¹⁴

¹³ V.V.R.N.M. Subbayya Chettair v. CIT, 1951 AIR 101

¹⁴ Garden Silk Mills Ltd. V. UOI, (1999) 113 ELT 358 SC

DATE FOR DETERMINING DUTY AND TARIFF VALUATION (SECTION 15)

The rate of duty and tariff valuation applicable to imported goods are determined based on the date on which the bill of entry is filed or the date on which the goods are presented for assessment.

The rate of duty and tariff valuation for export goods are determined based on the date on which the shipping bill is filed.

ASSESSMENT OF DUTY (SECTION 17)

Importers and exporters are required to self-assess the duty liability on the goods. Customs authorities may verify the self-assessment and reassess the duty if necessary. Customs authorities have the right to examine and test the goods to verify the accuracy of the self-assessment. The custom authorities are empowered to reassess duty and demand the difference if the initial assessment was provisional. The said person would be liable to pay the additional duty upon the final assessment.¹⁵

PROVISIONAL AND FINAL ASSESSMENT (SECTION 18)

Provisional assessment may be allowed if the importer/exporter cannot provide the necessary information for final assessment, due to pending legal cases or for the purpose of verifying the accuracy of declared value, classification, etc. The final assessment is completed once the required information is made available, and any difference in duty is either collected or refunded.

PAYMENT OF DUTY (SECTION 47)

Importers must pay the assessed duty before the goods are cleared for home consumption. If the duty is not paid within the stipulated time, interest is charged on the outstanding amount. Interest is levied on delayed payment of duty as prescribed by the Central Government.

EXEMPTION FROM DUTY (SECTION 25)

The Central Government may exempt goods from customs duty, either fully or partially, through notifications, subject to specified conditions. The Central Government may also grant exemption from duty in special cases on an ad hoc basis.

¹⁵ Collector of Customs v. Elephanta Oil and Industries Ltd. 2003, 154 ELT 140 SC

REFUND OF DUTY (SECTION 27)

Refund of duty may be claimed if it has been paid erroneously or if the importer/exporter is entitled to a refund under the law. Moreover, refund claims must be made within a specified period, usually one year from the date of payment. For a refund claim to be valid, there must be a formal challenge to the assessment order under Section 27 of the Customs Act.¹⁶

DRAWBACK OF DUTY (SECTIONS 74 AND 75)

Section 74 of the Customs Act, 1962 allows for a refund of customs duties paid on imported goods that are subsequently re-exported, provided the goods have not been used in India and are re-exported within a specified period. Section 75 of the Customs Act, 1962, provides for a refund of customs duties paid on imported materials used in the manufacture of goods that are exported, encouraging domestic manufacturing for export markets.

RECOVERY OF DUTY (SECTION 142)

If any duty, interest, or penalty is not paid, the customs authorities can take various recovery measures, including detaining and selling goods, issuing notices to recover dues from the debtor's assets, and initiating legal proceedings.

ADVANCE RULINGS (SECTIONS 28H TO 28M)

Importers or exporters can apply for an advance ruling on the classification, valuation, and applicability of duty exemptions for prospective imports/exports. Moreover, Advance rulings are binding on both the applicant and the customs authorities, providing certainty and clarity in tax matters.

INDIRECT TAXATION UNDER THE AMBIT OF GOODS AND SERVICES ACT, 2017

The GST Act, 2017, provides a detailed framework for the levy and collection of Goods and Services Tax in India. The relevant provisions prevailing specifically to the Taxation system under the Goods and Services Act, 2017 are as follows;

SCOPE OF SUPPLY (SECTION 7)

Section 7 of the GST Act, 2017 defines "supply" to include all forms of supply of goods or services such as sale, transfer, barter, exchange, license, rental, lease, or disposal made or agreed to be made for consideration by a person in the course or furtherance of business. The

¹⁶ Priya Blue Industries Ltd. V. Commissioner of Customs (Preventive), (2004) 172 ELT 145 SC

Supply must be made for consideration. Supply must be in the course or furtherance of business. It also Includes import of services for consideration, whether in the course or furtherance of business. Revenue generated also falls under the definition of “supply” as per the GST Act and thus, is subjected to GST.¹⁷ Moreover, the goods which are supplied free of cost for promotional activities without any consideration do not constitute a supply under the act and hence are not liable to GST.¹⁸

LEVY AND COLLECTION (SECTION 9)

Section 9 of the GST Act, 2017, specifies the levy of CGST on intra-state supplies and IGST on inter-state supplies at rates notified by the government. Section 9(1) provides information regarding the levy of CGST on intra-state supplies of goods or services at specified rates. Section 9(2) provides information on the central tax on the supply of petroleum crude, high-speed diesel, motor spirit (commonly known as petrol), natural gas, and aviation turbine fuel shall be levied with effect from such date as may be notified. Section 9(3) specifies categories of supply on which tax shall be paid on a reverse charge basis. Section 9(4) provides information regarding the levy of tax on reverse charge basis on supplies received by a registered person from an unregistered person. Section 9(5) specifies categories of services on which tax shall be paid by the electronic commerce operator if such services are supplied through it.

COMPOSITION LEVY (SECTION 10)

Provides for a simplified composition scheme for small taxpayers with a turnover below a certain threshold, allowing them to pay tax at a flat rate on their turnover. It is applicable to a registered person whose aggregate turnover in the preceding financial year did not exceed Rs. 1.5 crore. Tax rates are lower than the standard GST rates. The tax cannot be collected from recipients and they cannot claim input tax credit.

VALUE OF TAXABLE SUPPLY (SECTION 15)

This section outlines the provisions for determining the value of taxable supply of goods or services. Transaction value is the price actually paid or payable for the supply of goods or services. It Includes any taxes, duties, cesses, fees, and charges levied under any law for the

¹⁷ UOI v. Indus Towers Limited, (2019).

¹⁸ Re: Rajashree Sugars & Chemicals Limited (2018).

time being in force other than CGST, SGST, UTGST, and GST Compensation Cess. But it Excludes any discount which is given before or at the time of supply.

TAX INVOICE (SECTION 31)

Specifies the requirements for issuing tax invoices for the supply of goods and services as follows;

- A registered person supplying taxable goods or services shall issue a tax invoice.
- The invoice must contain the prescribed particulars.

PAYMENT OF TAX, INTEREST, PENALTY, AND OTHER AMOUNTS (SECTION 49)

Describes the manner of payment of tax, interest, penalty, and other amounts using the electronic cash ledger, credit ledger, and liability ledger as;

- Payment can be made through internet banking, credit card, debit card, National Electronic Funds Transfer (NEFT), Real-Time Gross Settlement (RTGS), or any other mode.
- The electronic cash ledger is maintained for deposits made by a taxpayer to pay tax, interest, penalty, fees, or any other amount.
- The electronic credit ledger is maintained for ITC availed by a taxpayer.
- The electronic liability ledger is maintained for the amount payable by a taxpayer.

INTEREST ON DELAYED PAYMENT OF TAX (SECTION 50)

Specifies the interest payable on delayed payment of tax. Interest at a rate not exceeding 18% per annum is payable for delay in payment of tax. In cases of undue or excess claim of ITC or undue or excess reduction in output tax liability, interest at a rate not exceeding 24% per annum is payable.

CONCLUSION

The Taxation laws in India are complex yet crucial for revenue generation and public welfare. Governed by the Income Tax Act of 1961 and the Goods and Services Tax (GST) Act of 2017, these laws encompass direct and indirect taxes levied by both central and state governments. Direct taxes, including income tax, are imposed directly on individuals based on their earnings, while indirect taxes like GST are levied on goods and services consumed. The Customs Act of 1962 regulates customs duties on imports and exports, ensuring proper assessment, valuation,

and collection. Recent developments focus on digitalization and transparency, but challenges such as complexity persist. Understanding residential status, nature of income, and various provisions of tax laws is essential for compliance. Overall, India's taxation laws aim to balance revenue collection with promoting economic growth and equitable distribution of wealth.