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Sensitization Towards Taxation Statutes Through Med

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Abstract

Taxation is a technical phenomenon and majority of the people are not interested in calculating applicable taxes due to technical and non-technical reasons and are dependent upon the outsiders like tax consultants and professionals. Tax is matter which affects the lives of all who so ever is earning money. Although annually through the budget sessions and consequent publication of session basic information is being provided to the assesse but such information is not sufficient enough to tax fiscal decisions. The word 'Media' has been generated from the word 'medium'. In broader terms media covers newspapers, radio, television etc. Media hereby is considered as a means to impart knowledge which is done with the usage of print or the electronic media. These days electronic media plays a vital role in imparting legal education. The issues relating to public are transmitted at the earliest without causing any delay. In previous decade various campaigns have taken place. For example, consumer awareness program has taken place with slogan 'Jagograhakjago'. This campaign fulfilled the desired objectives. This was made possibleonly because of usage of media in imparting legal literacy and awareness amongst the ultimate consumers. Similarly in today's era the taxation authorities are using media to expand legal literacy about the deadlines and procedures being followed in compliance of tax returns. Thus, media can be utilised to fill this information and knowledge gap to enable citizens to take informed and planned decisions.

Media is normally referred to as communication. It is referred to as a tool to impart information to various stake holders. The term, 'media', has been derived from the word medium which means carrier, reporting news, providing information and analysing various issues and creating awareness among masses. In the present research the role of media in imparting legal awareness with relation to taxation laws has been discussed. Finance is the backbone of any industry at smaller level and a country at a broader level. The funds are being collected by the governments while levying different types of taxes. Taxation laws are known for their technical nature. It is a subject matter related to every individual of a welfare state. A welfare state is capable of discharging its functions due to the available finances. In modern era government plays the role of key player in all round development of society. Initially the role of government was to discharge only traditional functions such as maintenance of law and order only. But now the government is playing an active role in a welfare state and is undertaking developmental activities such as education, sanitation, health and overall development of rural and urban areas[1]. But such activities require huge funding. Funds are needed even to bear the cost of government administration. The main source of earning for government is Taxes. The burden of paying taxes comes upon the general public in the form of direct and indirect taxes. The direct taxes are the taxes which are born by the person in the direct manner from his own pocket. Examples of these taxes are Income tax and

[1] Available at http://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/113120/8/08_chapter%202.pdflast visited on 1/05/2017

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Wealth Tax[2]. In other words, direct taxes are imposed directly on the people and are paid out of their own pocket into government treasury such as Income Tax. On the other hand, indirect taxes are the taxes the incidence of which is not directly on the consumer. The consumer normally purchases the goods and tax on behalf of the government is being collected by businessman and is paid in government treasury. The example of latest indirect tax is Goods and Services Tax.

Before independence India was a police state and was being controlled by Britons. The common man was not given due security and relief by the government but they were forced to pay exorbitant taxes to the government. It also remained a fact that whether the people had adequate resources for their bare necessities or not but they were supposed to pay taxes. Such kind of instances leads towards dissatisfaction amongst people. After independence the position is changed. Now India has turned out to be a welfare state and the biggest democracy of the world. The people are willingly paying taxes and those are efficiently being managed by the government and is being utilised for the welfare of the public.

With the beginning of socio-economic revolutions and transformations in society due to technical and scientific factors the scope of taxation laws has widened. Law is dynamic and keeps on changing as per the requirements of any specific society. Thus, every time new changes are supposed to be introduced through the amendments in the Finance Act. Such amendments are made to suit the needs of the society as well as the authorities. Following this socio-economic revolution, new jurisdictions in the law are bound to come into existence. Thus it becomes the duty of media to spread legal awareness regarding stated issues for effective implementation. Hereby the role of professionals including Chartered Accountants, Advocates and judges become important to interpret and apply the legal provisions while balancing the interests of society at large.

Basically judiciary and media are two independent institutions. The objective of these institutions is to interpret the law and spread awareness in society.Media is generally considered as the forth pillar of society. All the laws are being informed and implemented through media.

By describing the rights and laws, media acts as a mentor for common man. Various tools of media such as opinion polls, write ups, discussion and debates, enlightens authorities for taking acceptable decision. Hence, media fixes the responsibility of the government and its officialsagainst the general public. In the words of Mark Twain, “When there is information, there is enlightenment. When there is debate, there are solutions. When there is no sharing of power, no rule of law, no accountability, there is abuse, corruption, subjugation and indignation.” Thus, the objective of sharing information is the enlightenment of the public. If they are aware of the legal provisions only the instances of violation of laws and even the misuse of authority by the public officials can be ensured. If these things are ensured adequately, only then the rule of law can be ensured to exist in society.

Comparison of Taxation laws with penal laws

[2] Raja Chelliah, Reforming India’s Tax Base for Economic Development, available at http://www.jstor.org/stable/j.ctt2jbknm.6 last visited at 26/11/2019.

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Application of law is a social phenomenon. All the citizens of any country are not indulged into criminal activities and hence the applicability of penal provisions for committing offences are not appropriate for all the citizens. On the contrary provisions of income tax are applicable on all the citizens of the country. Majority of the people in any country are following one or the other occupation to satisfy the daily monetary requirements. It means they are earning income and hence are subject matter under the applicable taxation law. Government issues guidelines to fix the responsibility of the person being affected by the fiscal and the penal provisions while making amendments through the Finance Act every year in the budget session. Generally the people themselves are not aware enough to interpret and apply provisions Taxation law in an exact manner. Majority of the times they are dependent upon the advice of taxation consultants. But the provisions relating to taxation are highly technical and are being misinterpreted by the so called experts and general public is misled about the application of law.

Important aspects of Income Tax Law

As per Income tax Act, 1961 income from five broader heads is taxable in the hands of assessee. The five heads include- Income from salary, Income from House Property, business and profession, capital gains and Other sources. The provisions are applicable on all forms of persons. The definition of person is an inclusive definition. Person includes individual, firm, HUF, AOP, BOI, company, local authority and any other juridical person. It includes all kinds of persons whether resident in India or not resident in India. Even for technical purposes there is a difference between the term citizen and resident. As broader rule all the persons whose income is anywhere within India are entitled to be taxed in India. The person is entitled to pay tax not only on his own income but many times he is responsible to be taxed for the income earned by other persons as a representative assessee. Moreover, a person may be required to file multiple records and Income Tax returns in various capacities such as individual, partner, representative assessee or even as representative of a company etc. The income tax authorities are not supposed to leave any person untaxed from the perspective of this Act. Thus, the persons upon whom this tax is applicable are huge in number but adequate publicity of the legal provisions has not been maintained. The common method of spreading awareness regarding a law is to publicise it, which can be made through the print and electronic media. Even certain initiatives have been taken by the Income Tax Department itself to conduct campaigns to file Income Tax Returns etc. But looking at the quantum of population and efforts made seems to be disproportionate to balance the interest of all affected parties.

For instance, Analysis of Capital Gain Taxation

Specifically regarding Income under the head ‘Capital Gains’, major amendments have been made under the Act. The objective of such amendments was to broaden the tax base and to make it more contemporary as per the current scenario. Under this particular head of Income, gain arising on transfer of capital asset is taxable. The term capital asset has been defined under section 2(14) of the Income Tax Act, 1961.[3] It means, “property of any kind held by the Assessee, whether or not connected with the business or profession but it shall not include any stock in trade, consumable stores or raw material held for the purpose of business or profession.” It does not include personal effects i.e. immovable property held for the

[3]Dr. Kailash Rai, Taxation Laws, P. No. 183 Allahabad Law Agency, Allahabad, Eigth edition 2006

personal use by the Assessee and any family member dependent on him. Even the jewellery is also exempted from its preview. The third exception to the general rule is agricultural land in India. If any agricultural land in India which is not covering with in the municipality or cantonment board with population less than 10,000 shall not come under the preview of capital gain tax.

Further the capital asset can be divided into two categories: Long term capital asset and Short term capital assets. Short term capital asset means any asset held by an Assessee for not more than 36 months immediately preceding the date of its transfer. But in case of shares, units of the UTI or Zero coupon bonds the holding period is 12 months in place of 36 months. Any asset which is not falling under the category of short term capital asset is the long term capital asset and is subject to capital gain tax. But as per the Finance Act, 2017 for certain assets, duration of 36 months has been reduced to 24 months. It implies that if the asset is held for a period of 24 months or more than that the asset would be long term capital asset and vice versa. If the asset transferred is short term capital asset, capital gain will be short term capital gain. On the other hand long term capital gain arises on the transfer of long term capital asset. The purpose of differentiating long term and short term capital gain is the variation in the terms of applicability of tax rate.

In order to control inflation[4] and rising prices of goods necessary measures including amendment in the Income Tax Act regarding capital gain tax were required to be introduced. Thus, necessary steps have been taken by the government to reduce the impact of increased prices and increased capital gain tax. In case of immovable property the duration for which the property is held is 2 years but earlier this duration was 3 years in place of 2 years.Another change that has been made is in lieu of base year. Base year is required to determine the inflated value of the asset. For this indexation is made keeping in mind base year, whose value is taken as 100. Now, as per the amendments this base year has been shifted from 1.4.1981 to 1.4.2001 for computing long term capital gain. This amendment will reduce the capital gain tax liability to a greater extent and will also encourage mobility of assets. It has also been proposed to enhance the scope of financial instruments in order to increase the instances of reinvestment of capital gains without payment of tax[5].

The Finance Act 2017[6] has introduced very important changes concerning capital gains tax in the budget. The most important changes are as follows:

1. Base year shifted from 1981 to 2001 for computation of capital gains.
2. Definition of 'short-term capital asset' is amended to reduce holding period from 36 months to 24 months for immovable property[7]
3. In case of joint development agreement special provisions for computation of capital gains
4. It has expanded the scope of long term bonds under 54EC
5. Exemption of long term capital gains tax u/s 10(38)

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[4] https://economictimes.indiatimes.com/wealth/tax/budget-2017-shifted-indexation-calculation-base-to-2001-who-gains/articleshow/57034487.cms

[5] Available at http://www.thehindu.com/business/budget/Highlights-of-Union-Budget-2017-18/article17127298.ecelast visited on 26/11/2019

[6] Available at https://www.taxmann.com/Budget-2016-17/budget/t81/amendments-related-to-capital-gains.aspx last visited on 26/11/2019

[7] https://economictimes.indiatimes.com/wealth/tax/10-most-important-income-tax-changes-which-will-apply-from-april-1/articleshow/57807996.cms last visited on 26/11/2019

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6. Fair Market Value to be full value of consideration in certain cases

As discussed earlier, the capital gains are further discriminated as long term and short term. The difference can be analysed while applying the tax rate on both the gains. The long term capital gain is taxable at a flat rate of 20%. It means the tax is applicable on a uniform rate of 20% irrespective of the maximum or the minimum income. In case of short term gain it is taxed as an ordinary income of the assessee. But it is worth noting that taxable amount is the amount of gain or the profit. The gain is calculated while deducting indexed cost of acquisition, indeed cost of improvement, expenses relating to transfer of asset from the sales consideration. The balance amount is treated as capital gain and is taxable at the rate of 20%.

While calculating short term capital gain the benefit of indexation is not given. Other than all other expenses including the transfer expenses, cost of acquisition and cost of improvement are deducted to calculate short term capital gain. From this particular finance year it is treated as part of taxable income and is taxed according to the applicable slab rates.

Moreover, within the Act itself various provisions have been included for tax avoidance through tax planning. As stated earlier any person who is earning income is supposed to pay tax. This incidence of tax can be reduced while utilising the available deduction under section 54 of the Act. Broadly, the exemptions are available if a person earning the gain invests it into some recognised investments. For example, if a person earns capital gain on the sale of a residential accommodation and the amount of gain is utilized for purchasing another residential accommodation then the entire amount shall be exempted from tax. Similarly, if a person is gaining after selling urban agricultural land and the proceeds are invested for purchasing similar property then the gains shall not be taxable.

A new exemption is also provided to encourage start-ups. The eligibility for this exemption is - capital asset must be a residential house property or a plot of original land. Asset must be transferred during April 1, 2012 and March 31, 2017 but in case of an investment in eligible start up, the residential property can be transferred up to March 31, 2019. For availing the exemption the assesse must have invested the sales consideration for purchasing equity shares in an eligible company. The eligible company should utilize the amount in purchasing new assets within one year from the date of subscription in equity shares. In case investment is not made by the eligible company then the company must deposit the amount in capital gain account scheme.

The impact of these amendments would be reduction in capital gain tax to a greater extent.

This was in relation to amendments introduced in the Act itself. Other than this various issues and cases have also been reported by media to general public. For reference is the case of ***Vodafone International Holdings B.V. v. Union of India***[8]is taken, it can be observed that the Supreme Court quashed the order of the High Court. The issue involved a demand of Rs. 12,000 crore as capital gain tax. It was held that revenue authorities cannot impose tax on off shore transaction which has taken place between two non-resident companies but having controlling interests in an Indian resident company. Basically in this case the revenue authorities have lost due to lacunae in law.As a result various amendments

[8] (2012) 204 Taxman 408(SC)

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have been made in Income Tax Act to supersede the adverse judgment of Supreme Court which has not only effected Vodafone but several such disputes relating to taxation of capital gains and deemed income of numerous NGOs.

Distinction between business income and capital gain

A particular asset may be considered as stock in trade as well as capital asset. If the asset is considered as stock in trade then the income earned on the transfer of asset shall be considered as business income but on the other hand the assesse was using an asset for hisown purposes and held it as an investment than the income earned on disposal of the asset shall be considered as capital gain. Assessee remains in an advantageous situation if he claims the income to be taxed under the head capital gains in stead of business income.

In ***Ram Sarup Saini (HUF) v. ACIT*** [9]assesse acquired certain land by way of inheritance in the year 1980. Later land was approved by Town Planning Scheme by paying development charges to the municipality. Then assesse started selling the plots in smaller denomination. While filling return of income asseesee claimed it as sale from agricultural land only and declared the income under the head capital gains. The AssessingOfficer, treated the transaction in the nature of trade and accordingly treated the surplus income as business income.

Conclusion

Such kinds of issues are the technical issues. It aroused due to change in circumstances which were never foreseeable by law at a specified stage. But the law was adequately amended to solve the upcoming problems. In relation to capital gain tax special scheme is also available. In case a person is not investing in the stated properties than he can invest the amount of gain in Capital Gain Account Scheme for saving tax. But people are not much aware about schemes and no publicity has been done by media to guide people on the stated issues.

From time to time the government introduces awareness campaigns to popularise applicability of any concerned law. For example, the Consumer Protection Act. A campaign was introduced by the government with a slogan “JagoGrahakJago”. The objective of the campaign was to create awareness amongst the people. Similarily after the implementation of Goods and Services Act timely announcements and adequate circulation of information was made available by the government to ensure adequate compliance. Similar policies must be implemented by the government to ensure effective implementation of various laws. “Ignorance of Law is no excuse” but effective information to the concerned people must be ensured by the legislature to cover up all sort of misinformation.

[9](2007) 15 SOT 470[Del.]