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CONTEMPORARY ISSUES IN TAXATION LAW

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Abstract:

Tax payment is mandatory for every citizen of the country. Taxation is an instrumental tool to picture resources for the government to enable it to formulate policy scheme for the overall development of the economy. Income tax plays an important roles as a source of revenue and an effective measure of removal of economy disparity. The object and function of the Union and state Governments are to provide social, welfare amenities to the people of the country. If they tax upon other Governments, it burdens them and unnecessary time consumption takes place. To avoid inconvenience, the Doctrine of immunity of instrumentalities functions as a safe guard.

Key Words: Direct tax, Indirect Tax, funds, immunity of intrumentalities, exemptions, assessment, Revenue, Authorities.

I.INTRODUCTION:

"No tax shall be levied or collected without the authority of law" according to the conditions in Article 265 as, there must be a law, such law must authorize the tax, the tax must be levied and collected according to law and a tax law should not violate the Fundamental Rights to Equality guaranteed by Article 14.

Article 285 of the constitution of India exempts the properties of the Union from State taxation. Article 289(1) of the Constitution of India exempts the property and income of a state from union taxation. The Doctrine of immunity of instrumentalities was evolved to protect the outonomy of the National and State Governments within their respective spheres from being encroached upon by each other. The Doctrine of immunity was originated in the U.S.A. It was developed as a result of judicial interpretation. It was not mentioned in American Constitution. Article 289(2) relaxes the Doctrine of immunity of instrumentalities to such extent, if any as the Parliament may by law provide in respect of trade or business of any kind carried on by or on behalf of the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business or any income accruing or arising in connection therewith. Parliament has power to declare any class of trade or business as incidental to the ordinary functions of Government and it would then the immune from union taxation which is similar to American Doctrine.

The Central Government can impose a tax on income or property of State-owned companies or corporations because they have a separate entity and individuality from its shareholders and other property and income cannot be regarded as that of the State. The exemption under Article 289(1) extends only to the State Government, but not to their instrumentalities. The Supreme Court interpreted the situation from time to time and has refused to apply the Doctrine of immunity of instrumentalities beyond the area laid down in Articles 285, 287, 288 and 289.

The Supreme Court held that granting tax exemption to State enterprises not only places them in a favoured position vis-à-vis private enterprises which is heavily taxed but also adversely affects the tax raising capacity of the center. Section 2 (43) of the income Tax Act 1961 defines "Tax" . Income tax is imposed on the 'Net income of a person" . It is in relation to the assessment year commencing on the Ist day of April 1965 and any subsequent assessment year means income-tax chargeable under the provisions of this Act and relation to any other assessement year income-tax and super tax chargeable under the provisions of the Act prior to the aforesaid date.

II.DIRECT TAX AND INDIRECT TAX:

(a)Direct Taxes are those which are taxpayer pays directly from the income/wealth/estate etc. Section 2© of the Central Boards of Revenue Act 1963 of India defines "direct tax'. Any other duty or tax which, having regards to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax. They are paid after the income reached in the hands of the tax-payer. These are largely taxes on Income-tax, gift-tax Wealth-tax, corporation tax, property tax and inheritance tax are comes under Direct Taxes which are imposed on person's net income or net asset. Collection cost of the Direct Taxes is over 2% of the tax collected.

Revenue collected under the direct taxes is lesser than the Indirect taxes. Direct taxes are transferable to another person or organization. The companies and individuals on whom the direct taxes are applied are solely responsible for paying the taxes failure to pay taxes on time may result in fines and imprisonments. Income tax can be filed by filling applicable forms. Salaried individuals earning less than Rs.50 lakhs through income from salary, residential property other sources, and agriculture, should file their taxes by filing ITR-1 form.

With the increasing ease of doing business in India, investors are highly optimistic about making investments in the country. Our team of specialists assists businesses on various tax and regulatory matters at every stage of business lifecycle, thereby enabling them to explore and make the most out of the opportunities. Our goal is to minimize your business and personal tax exposure by means of legitimate planning and keeping you aware of the changing requirements of the taxation system in India and abroad.

(b) Indirect Taxes are those which the taxpayer pays indirectly i.e. while purchasing goods and commodities paying for services etc. In India businesses need to follow several crucial steps when dealing with indirect taxes. They must identify which indirect taxes are applicable to their business, such as GST, customs duty, Excise duty or service tax. If the tax authorities issue a show cause notice, it is vital to take immediate action. This involves preparing a response to the notice with all the relevant information and evidence that supports the business's position. Moreover, submitting supporting documents may also be necessary. This step requires guidance on the documents required and ensuring their accurate and timely submission.

It must paid before the goods reach the taxpayer. Indirect Taxes are Sales Tax, Octroi, Customs Duty Service Tax, Expenditure Tax, Central Excise, Entry tax etc. which are imposed mainly on goods/commodities. Collection cost of indirect ax is about 0.7% of tax collected. Revenue collected under the indirect taxes is larger than the Direct Taxes.

Indirect taxes are touted to be streamlined following the introduction of the uniform Goods and Services Tax (GST). There are different kinds of indirect tax in India. However, after implementation of GST, all these indirect taxes were bundled into one singular tax for the citizens of India. We will have a look at the different types of indirect tax in India. S

Service tax is levied by an entity in return for the service provided by them. Excise duty levied on products or good is manufactured by a company in India is called the Excise Duty. The manufacturing company pays the tax on the goods and in turn recover the amount from their customers. Value Added Tax is also knows as VAT, this type of tax is levied on any product sold directly to customer and are movable. VAT consists of Central Sales Tax which is paid to the Government of India State Central Sales Tax which is paid to the respective State Government. Custom Duty is a tax levied on the goods imported to India. Sometimes Custom Duty is also levied on products which are exported out of India. Stamp Duty is a tax levied on the transfer of any immovable property in a state of India. The state government in whose state the property is located charges this type of tax. Stamp tax is also applicable on all legal documents too. Entertainment Tax is charged by the state government and is applicable on any products or transactions related to entertainment. Purchase of any video games, movie shows, sports activities, arcades, amusement parks etc. are some of the products on which entertainment Tax is charges. Securities Transaction Tax is levied during the trading of securities through Indian Stock Exchange.

III.Doctrine of Immunity of Instrumentalities:

The Doctrine of immunity was organized in the U.S.A is was developed as a result of judicial interpretation. It was not mentioned in American Constitution Article 289(2) relaxes the doctrine of instrumentalities, which allows the Union Government so impose tax on State Governments or their instrumentalities such extent. If any as Parliament may by law provide in respect of trade or business of any kind carried on by law, provide in respect of trade or business of any kind carried on by or on behalf of the Government of a state, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business or any income occruing or arising in connection therewith.

Parliament has power to declare any class of trade or business as incidental to the ordinary functions of government, and if would then the immune from union taxation it is similar in American doctrine. The central government can impose a tax on income or property of state-owned companies or corporations because they have a separate entity and individuality from its share holders and their property and income cannot be regarded as that of the state. Therefore, exemption under Article 289(1) extends only to the State Government, but not to their instrumentalities.

While disposing the case "Andhra Pradesh State Civil Supplies Corporations Ltd. Vs. I.T Commissioner, Hyderabad (1983)" the Supreme Court held that an intrumentality of a state is different entity than the state itself, and therefore, is liable to be imposed income-tax.

The Supreme Court interpreted that situation from time to time and has refused to apply the doctrine of immunity of intrumentalities beyond the areas laid down in Article 285,287, 288 and 289. The Supreme Court held that granting tax exemption to state enterprises not only places them in a favoured position vis-à-vis private enterprises which is heavily taxed, but also adversely affects the tax raising capacity of the center.

IV.AUTHORITIES:

Section 116 talks about various income-tax authorities.

The Central Board of Director Taxes (CBIT) constituted under the Central Boards of Revenue Act 1963. Directors of Income-tax of Commissioners of income-tax, Additional Directors of Income Tax, Deputy Directors of Income-tax, Assistant Commissioners of income-tax, Income tax officers, Tax Recovery Officers, inspectors of income-tax.

Jurisdiction of Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on or as per the assigned area or persons or classes of persons or incomes or classes of cases shall be performed by Deputy Commissioner. It is purely depends on territorial area, persons or classes of persons, Incomes of classes if income and cases or classes of cases. Income-tax officers are empowered to enter and search any building place vessel, vehicle or aircraft where he has reasons to suspect that such books of accounts other documents, money, bullion, jewellery or other valuable article or thing are kept. Break open the lock of any door box, locker, safe almirah or other receptable for exercising the powers conferred by clause (i) where the keys thereof are not available. Search any person who has got out of or about to get into or is in the building, place, vessel vehicle or aircraft of the authorized officer has reason to suspect that such person has secreted about his person any such books of accounts, other documents, money, bullion, jewellery or other valuable article or thing. Seize any such books of account, other documents, money bullion, jewellery or other valuable article or thing found as a result of such search. Place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom. Make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

V.Conclusion:

Taxation plays an important role in the economy and society and has its significant impact on individuals, businesses and government. Taxation has been the primary sources of revenue for states across the world for centuries and India is no exception to this. The nation has a structured tax system that employees both progressive and proportional taxation based on income and other factors and is determined by Central and state Governments. The population should endeavor to comprehend the importance of income tax, rather assuming income tax is a burden and citizen should contributed to the progress of a nation by paying income tax.

VI.References:

Gade Veera Reddy, Advocate, High Court, Hyderabad, Sujata Law Series.

Links: https://vakilsearch.com/indirect-tax