

## RETROSPECTIVE APPLICATION OF TAX LAWS IN INDIA

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### ABSTRACT

Taxes are the consideration given by the taxpayer (an individual) for the benefits of the economy which is provided by the government. The tax aims to provide economic stability and promote the income of the nation. The retrospective introduction has amendments in tax law that create obligations in the past. It is used by the Indian government to reduce or overthrow judicial decrees and biased tax duties.

**Keywords:** tax, retrospective, amendment, government policy, past transaction.

### INTRODUCTION

Tax is a compulsory payment to the government by the subjects or members of the state without any expectation of return. In simple words, tax is a payment made from their income to the government without expecting a return from the government. Every member of society is abiding by the law to pay their taxes duly and certainly. If one fails to do so, he/she will be made liable. The tax is broadly classified into two types such as direct taxes and indirect taxes. Taxes have been seen from various perspectives in the eyes of indefinite jurists, scholars;

smith Adam: "The taxes which, it is intended, should fall indifferently upon every different species of revenue, as capital taxes and taxes upon consumable commodities. These must be indifferently from whatever revenue the contributors may possess, from the rent of their land, from the profits of their stock, or the wages of their labor."

Seligman: "Tax is a compulsory contribution from a person to the government to defray the expenses incurred in the common interest of all, without reference to special benefits to be conferred."

Antonino de Viti de Macro: "The tax is the price which each citizen pays to the state to cover his share of the cost of the general public service which shall he will consume".

Bastable: "Tax as a compulsory contribution of the wealth of a person or a body of persons for the service of public power".

### CHARACTERISTICS OF TAX

- Taxes are levied by the Government.
- It is the compulsory contribution of the taxpayer.
- In paying tax, sacrifice is involved.
- Payment of tax is a personal duty towards the government.
- Taxation's aim is the welfare of the community as a whole.
- The primary purpose of a tax is to raise public revenue.
- It is a legal collection.
- Taxes are paid out of income, it varies to classes of people depending upon their income.

### RETROSPECTIVE TAX

A retrospective tax is a tax charged for past transactions. It may be a new or supplementary charge on the past transaction. It allows the nation to accomplish the rules to impose laws on indubitable products, goods, or services. It is

used and encouraged by many countries to deviate from the taxation policies in the past. It is followed and implemented not only in India but also US, UK, Australia, Netherlands, Belgium, and Canada had the retrospective tax. While it may or may not be an additional tax. To date one of the more important and dubious retrospectives was the finance act 2012.

### JUDICIAL OPINION ON RETROSPECTIVE TAXATION LAWS

In the case of ***Chhotabhai Jethabhai Patel & Co v. Union of India*** (1961), the government proclaims that the duty of fabricated tobacco would be effective from the date the bill was announced in the parliament but will not be effective from the date which bill is passed in the parliament. The plaintiff longed for consolation against the retrospective law from the supreme court. The court depended on the precedents of whether the retrospective is constitutional or unconstitutional. Constitution is suitable for being applied in taxation laws, but retrospective does not make it arbitrary and it is unconstitutional.

While Supreme Court deciding the case of ***Maneka Gandhi v. Union of India***, clearly stated that the legislature is constrained in fundamental rights while implementing or introducing retrospective laws. Retrospective amendments are allowed by the judiciary to restore or antidote imperfection in live and actual laws.

In the case of ***Lohia Machines Ltd and Anr. V. Union of India***, the supreme court held that its (retrospective) amendment was clear up in nature and the consequence is accepted.

In ***Commr. In Income Tax v. Alom Extrusion Ltd.***, taxpayers were losing out on the benefit due to an amendment statute. Retrospective taxation laws are descriptive and enunciatory. In unquestionable occurrence, prospective amendments can be carried out or kept as retrospective in application.

### RECENT CONTROVERSIES

- ❖ Vodafone International Holdings BV v, Union of India,

The court held that the revenue authorities of India do not have any authority to tax on an outside location of one's home country between two parties.

- ❖ Cairn UK Holding Limited case

The assets held by claim India Holdings have to be transferred to a company registered in India, tax authorities argued that the agreement on a proposal between the overseas entities.

### IMPACTS OF RETROSPECTIVE TAXATION

- Undermined government policy – an unexpected policy was introduced by the government as a retrospective effect due to the amendment of an income tax law.
- Wreck investment – it creates pathetic and fear for foreign investors to invest in our country.
- Bilateral relations – it affects the relationship among the countries. It may affect trade and commerce.
- Tax terrorism – undue exercise of power by tax authorities leads to tax terrorism. Indian and foreign firms consider the law as tax terrorism.
- Loss of creditability – creditability of India suffers due to international arbitration principles or procedures.

### CONCLUSION

Retrospective amendments to tax laws have both pros and cons. They can be used to fix the uncertain and loopholes and they also create uncertainty. The operation of retrospectives is more beneficial in particular areas, but meanwhile, it could violate the rights of the people. To conclude that these laws have many negatives that the positive aspects. Therefore, in a particular case, there are no exceptions. concerning the recent judgment of the supreme court proclaims that the legislature has the



right to make retrospective legislation or statutes.

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