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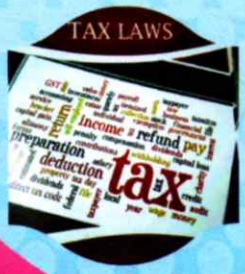

ON THE OCCASION OF

ONE DAY TAX CONFERENCE
AT BLACK DIAMOND AUDITORIUM, ANGUL
ON 28TH OF APRIL 2024

ORGANIZED BY

ALL INDIA FEDERATION OF TAX PRACTITIONERS - EZ

HOSTED BY

ANGUL DISTRICT TAX BAR ASSOCIATION, ODISHA

Gyan Tarang

BALASORE TAX BAR ASSOCIATION
BALASORE
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ALL INDIA FEDERATION OF TAX PRACTITIONERS
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National Tax Conference EZ-2024

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ONE DAY TAX CONFERENCE

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1ST SEPTEMBER 2024 AT JAMSHEDPUR

Organised by

Commercial Taxes Bar Association, Jamshedpur

In Association with

ALL INDIA FEDERATION OF TAX PRACTITIONERS

Eastern Zone

Shortlisted Articles On

Current Topics

Changed Concept of Penalty for Concealment

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The Concept **of 'Penalty'** has undergone a sea change in the Income tax Act and a tax professional has to re-learn and un-learn a lot to keep abreast with the changed law. The most important and significant change has been made in the concept of concealment for which the penalty prescribed was under section 271(1)(c). Section 271(1)(c) of the Income-tax Act, 1961 prescribes two faults or omissions which exposes the assessee to concealment penalty. These are concealment of particulars of income and furnishing inaccurate particulars of such income. Penalty has always been a cause of litigation and the law books are full of judgements favouring both sides. However Finance Act 2017 has brought in two new sections 270A and 270AA to replace the existing section 271(1)(c). With this change the old provisions will continue to apply to cases before A.Y. 2017-18 and the new provisions shall be applicable to cases A.Y. 2017-18 and onwards.In this article I have tried to analyse the new provisions.

It is apparent from the insertion of sub-section (7) in section 271that the new provision of section 270A and 270AA will apply to cases pertaining to Assessment Years 2017-18 onwards and existing provision of Section 271(1)(c) will continue to be applicable to all cases up to Assessment Years 2016-17. Further the new section will not be applicable to cases where assessment is made in pursuance of search u/s.132 as evident from clause (e) of sub section (6) of section 270A and in such cases, the penalty can be levied under the old provisions of section 271(1)(c). It may also be noted that for search cases assessment made u/s.153C is outside the scope of section 271AAB and therefore in such cases, the penalty would, henceforth, be levied as per the new scheme.

Section 270A of the Income Tax Act has empowered an assessing officer (AO), a Commissioner (Appeals), a Principal Commissioner, or a Commissioner to impose upon a person to penalty if he **under-reports** or **misreports** his income. The penalty may range from 50% to 200%. Under the new scheme, the penalty ases are categorised in two parts – (1) under reporting of income and (2) misreporting of income. Under reported income has been defined in Section 270A(2) which is to be read with section (8) & (9) of this section. With a view to remove the discretion of the Assessing Officer, a fixed percentage of the amount of penalty would be imposed under the new scheme. Hence penalty for under reported income will be @ fixed rate of 50% of the tax payable on unreported income while it will be @ 200% of the tax payable on the misreported income as against 100% to 300% of concealed income under the existing provision of section 271(1)(c).

First of all it is important to understand what is misreporting and what is under-reporting as both terms seem to be overlapping and lot of confusion persists even in the minds of tax officials. I am presently dealing with a case where the ad-hoc disallowances are made in case of assessee with audited accounts, for two consecutive years. For one year the AO has imposed penalty for under-reporting and for the second year the penalty is for mis-reporting. That means 50% for the first year and 200% for the second year and that too on ad-hoc disallowances of expenses made on percentage basis. !! The AO justifies his action by saying that now any addition made will come under the category of misreporting or underreporting and the concept of concealment is gone.

However the lawmakers have tried to define the concepts. The under - reported income has been defined in sub–section (2) section 270A. According to this provision, a person shall be considered to have unreported his income where:-

a) The assessed income is greater than the income processed u/s.143(1)(a).

b) The income assessed is greater than the maximum amount not chargeable to tax, where no return is filed by the assessee.

c) Where the income reassessed is greater that the income assessed or reassessed immediately before such assessment.

d) Where the deemed total income assessed or reassessed as per the provision of section 115JB/115JC is greater that the deemed total income determined u/s.143(1)(a).

e) Where the deemed total income assessed under the provisions of section 115JB/115JC is greater than the maximum amount not chargeable to tax, where no return is filed by the assessee.

f) Where the amount of deemed total income reassessed as per the provisions of section 115JB and 115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment.

g) Where the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

However in order to avoid litigation between the tax authorities and the taxpayers, the Act also provides for exclusion of certain amounts from the scope of the expression “Unreported income”. Such exclusions are enumerated in sub section (6) which are narrated below:-

h) The additions or disallowances in respect of which assessee offers a bona fide explanation to the satisfaction of the tax authority and proves that he had disclosed all material facts to substantiate the explanation;

i) The additions or disallowance determined on estimate basis, if the account maintained by assessed are correct and complete to the satisfaction of tax authority but the method employed is such that the income cannot properly be deduced there from;

j) The additions or disallowances determined on estimate basis, where the assessee had, suo motto, made a lower amount of disallowance on the same issue in computation of income but had disclosed all material facts in respect of such additions or disallowances;

k) The amount of addition made in conformity of arm's length price determined by TPO if the assessee had maintained information and documents as prescribed u/s.92D of the Act and declared the international transactions and disclosed all material facts relating to such transactions;

l) The amount of undisclosed income referred to in section 271AAB.
For the purpose of levy of penalty, the amount of tax payable on under reported income as per sub-section (10) shall be computed as follows:-

m) Where no return of income has been furnished and the total income has been assessed for the first time, the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income

n) Where the total income determined under 143(1)(a) or assessed, reassessed or recomputed in a preceding order is a loss, the amount of tax calculated on the under-reported income as if it were the total income

(o) In any other case determined in accordance with the formula – (X-Y) Where X = the amount of tax calculated on the under-reported income as increased by the total income determined under 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order as if it were the total income; and Y = the amount of tax calculated on the total income determined under 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order Sub section (12) provides that such penalty shall be imposed by the tax authority by an order in writing.

It may be interesting to note that for the first time an immunity clause is inserted which grants immunity from penalty and prosecution. Section 270AA provides for immunity from levy of penalty u/s.270A and prosecution u/s.276C of the Act. According to this scheme, an assessee shall be granted such immunity if following conditions are satisfied:-

p) Tax and interest payable as specified in the notice of demand in pursuance of order of assessment or reassessment has been paid within the time specified in such notice of demand; and

q) No appeal is filed against the order of assessment or reassessment.

The procedure for obtaining immunity states that assessee is required to file an application in the prescribed form within one month from the end of the month in which such order of assessment or reassessment is received by the assessee. The Assessing Officer, if conditions are fulfilled, shall grant immunity from imposition of penalty u/s.270A and prosecution u/s.276C or section 276CC provided the penalty is not initiated under the circumstances mentioned in sub section (9). The A.O. is bound to pass an order within one month from the end of the month in which such application is received. It may be noted that the immunity will be lost if the tax and interest are not paid within the time specified and the application in the prescribed for is not filed.

Old and new provisions distinguished

A) Under the existing provisions, the AO has to record his satisfaction to the effect that the assessee had concealed the particulars of income or furnished inaccurate particulars of income. Failure to record such satisfaction renders the Penalty order bad-in-law. However under new law, there is no such statutory requirement and simple initiation of penal proceeding in the order or by issue of penalty notice would be sufficient.

B) Under the existing provisions, the tax authority has to show that assessee has concealed the particulars of income or furnished the inaccurate particulars of income. Under new law there is no such requirement because in case of under reporting of income difference between the assessed income and income determined u/s. 143(1)(a) is presumed to be under reporting of income or difference between the assessed income and maximum amount not chargeable to tax, where no return filed is filed by the assessee. However, in case of misreporting of Income, the tax authority will have to prove or demonstrate that case of assessee falls within the criteria mentioned in sub – section (9).

C) Under the existing provisions, there is a discretion with the AO to impose penalty between 100% to 300% of the tax payable but under the new law, the AO has no such discretion. The penalty is mandatory at flat rate of 50% of tax payable on under reported income and 200% of tax payable on misreported income. However, as stated earlier, sub-clause (6) comes to the rescue of the assessee which makes it mandatory to issue notice before imposition of penalty and opportunity to the assessee to substantiate his bonafides.

D) The limitation period specified in section 275 will apply to order passed under old as well as new law,

E) The right of appeal is available under section 246A under both the schemes under section 246A.

Some significant points on Computation of Penalty.

Section 270A sub section (2) defines the scope of the expression "under reported income" and sub section (3) provides the procedure for computing such income as under-

a) Where the income has been assessed for the first time in response to the return filed, it will mean the difference between the amount of income assessed and the amount of income determined u/s.143 (1) (a). Such assessment may be u/s.143(3) or u/s.147. Thus, under reported income would not include the amount of adjustment made in determining the income u/s.143(1)(a).For example, assessee files a return declaring income of Rs.8 lacs but income is determining at Rs.11 lacs u/s 143(1)(a) and finally income is assessed at Rs.12 lacs u/s.143(3)/147. In such case under reported income would be Rs.1 lac and not Rs.3 lac.

b) Where no return is filed by the assessee, the computation has two dimensions i.e. (i) where the assesse is a company, firm or local authority, it will be entire amount of income assessed and (ii) in case of other assesses, it will be the difference between the amount of income assessed and the maximum amount not chargeable to tax.

b) Where the income is assessed as a result of reassessment or re-computation (not being assessed for the first time), it will mean the difference between the amount of income re-assessed or re-computed and the amount of income assessed, re-assessed or re-computed in a preceding order. The preceding order has been defined as the order passed immediately preceding the order during the course of which penalty proceeding is initiated. Such preceding order may be as a result of assessment made u/s.143 or 147 or as a result of direction of appellate/revisionary authority or Tribunal or Court as the case may be.

c) Where the income is assessed by way of deemed assessment u/s.115JB/115JC, it will mean the amount determined as per the formula given in the proviso to sub-section 3(ii) of section 270A. This formula is similar to formula provided in the existing provision of Explanation 4 to section 271(1)(c).

d) Where as a result of assessment/reassessment, the loss is reduced or loss is converted into income, it will mean the difference between the amount of loss claimed by the assessee and the income or loss assessed or reassessed. For example, where returned loss is 10 Lacs assessed income is 5 lacs, the unreported income will be 15 lacs.

However, it may be noted that the under reported income shall not include the amount of income referred to in sub-section (6) of the section which explains the circumstances where penalty in respect of under reporting of income cannot be levied. If the addition is shown to be covered by any of the circumstances then it will be excluded from the computation of unreported income. Such circumstances are as under:-

First situation is where any addition or disallowance is made by the A.O but assessee has offered an explanation which is bona fide to the satisfaction of AO and has disclosed all the material facts to substantiate the explanation. For example, in case of a loan. If the assessee has furnished all material facts i.e. name and address of the creditors, his PAN, copy of ITR, ward where he assessed, confirmation from creditor, copies of bank statement etc. but the addition is made by simply because the creditor could not be produced or not responded in response to notice u/s 133(6). In my opinion based on judicial opinions, it cannot be said that explanation of assessee was not bona fide. Hence it will not constitute underreporting of income since all material facts are disclosed. But at the same time, litigation cannot be ruled out as the A.O may not be satisfied with the explanation of the assessee and the assessee may have to

a) go in appeal for relief. This clause, being general one, will be applicable to any kind of addition or disallowance made by A.O. Whether a case would fall under this category or not would depend on the facts of each case.

b) Second situation is where the accounts of the assessee are correct and complete as per the accounting system but the method employed is such that income cannot properly be deduced there from and as result thereof the addition is made on estimate basis. For example, GP rate is enhanced on estimated basis merely on the grounds that it is lower than the other assessees in the same trade or because of non maintenance of stock register etc. such addition shall not be considered in computing the unreported income.

c) Third situation is where some disallowance is made by the assessee on his own but the A.O. enhances the same on estimate basis provided all material facts are disclosed by the assessee. For example, 10% of motor car expenses are added back for personal use but the AO enhances it to 20%. or disallowance is made by the assessee u/s.14A but the AO not being satisfied enhances the same even though all material facts are disclosed by the assesse.In such cases, it will not amount to under reported income.

d) Fourth situation is where the assessee had maintained information and documents prescribed under section 92D, disclosed the international transactions under Chapter X and also disclosed all material facts relating to such transactions but addition is made in conformity with the arm's length price determined by TPO. Merely because addition is made on the basis of TPO's order, it will not amount to under reported income.

e) The last situation is where penalty u/s.271AAB. S.271AAB applies where additions are made in case of a person in whose case search is initiated u/s.132.

"Misreporting of Income"

"Misreporting of income" is more stringent as compared to "under reported income" and penalty in such case is to be imposed @ 200% of the tax payable as against 50% in case of under reported income. A combined reading of sub-section (8) & (9) shows that it is the under reported income which is to be treated as misreporting of income only if under reported income is in consequence of items specified under sub- section (9). So firstly, under reported income is to be determined and then AO has to give a finding that such under reported income is mis-reportingin terms of sub section (9). Thus if any addition/disallowance does not fall within the scope of "under-reported income" then question of treating the same as misreporting of income does not arise. Hence, in my opinion, the onus is on the revenue to prove that the addition or the under reported income falls within the circumstances mentioned is sub section (9). The circumstances are as follows:-

1) Misrepresentation means suppression of facts which involves the elements of mens-rea i.e the guilty mind on the part of assessee. This aspect will always be a subject matter of litigation.

2) The second item is failure to record investment in the books of account. But there may be cases where assessee does not make books of account even though such receipts are revenue receipts. For example, assessees filling u/s.44AD or 44ADA are not required to maintain books of account. In such cases, this sub section would become inapplicable

3) The third item in the list refers to claim of assessee regarding expenditure not substantiated by any evidences. The word "any" is important which can be read as no evidence. In other words the assessee has 'No evidence' of the expenditure claimed So where evidences have been filed by the assesse, it should not be a case of misreporting of income merely because it is not believed by the AO.

4) Fourth item refers to recording of false entry in the books of account. The word " false" also involves mensrea on the part of assessee. Hence, onus will be on revenue to prove the mensrea.

5) Fifth item refers to failure to record receipt in the books of account which has a bearing on the total income. Such facts can be demonstrated by AO just by referring to books of account of the assessee.

6) The Last item is failure of report international transaction or specified domestic transaction.

Conclusion

In my humble opinion the amendments are made simply to make the departmental officers more comfortable without being hit by the technical errors which they commit and large number of cases are decided against them due to their casual approach or minor technical defaults. The new provisions are too harsh and drastic in some cases like where an assessee fails to file the return for bona fide reasons beyond his control or due to simply inadvertence or carelessness without any malafide. For example, a person with only interest income of say 10 lacs on which TDS is deducted and he has actually no tax liability but a refund, a salaried person with proper TDS deducted or failure to file return due to circumstances beyond control like terminal illness, death etc. Suppose a firm earned income of Rs.50 lakhs during a year in respect of which TDS and advance tax are fully paid as per law. However, it fails to file the return due to bonafide unavoidable circumstances. The assessment is completed assessing the income at Rs.52 lakhs u/s.144. In such case, the entire amount of Rs.52 lakhs will be treated as under reported income as per sub section (3). The tax payable on such assessed income will be Rs.16.068 lakhs including of education cess on which penalty of Rs.8.034 lakhs will be imposed even though the entire tax is already paid. On the contrary, had it filed the return, the under reported income would only be Rs.2 lakhs on which tax payable would be tax on under-reported income of Rs 2 lakhs plus total income of Rs 50 lakhs (Rs 16.068 lakhs) less tax on total income of Rs 50 lakhs declared or determined u/s 143(1)(a) (Rs15.45 lakhs)i.e, Rs.61,800 /- only and penalty would be only Rs.30,900 /-.

Actually the penalty, in such cases, is mainly for late filling of return rather than for under reported income. In my opinion, suitable amendment needs to be made in this behalf. In order to avoid hardship, the only option with the assessee is to avail immunity by paying tax and interest in accordance with the provision of section 270AA which is also not a very good option. However time will tell when the provisions are tested in appeals and i am sure that after appreciating the actual outcome of the new provisions suitable amendments will be made.

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Once notice or order is issued electronically it is deemed to have been served

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We all know that the procedure for issue and service of summons which has been prescribed in Order-V Rule-1 of Civil Procedure Code, 1908.

(1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim:

Provided further that where a summons has been issued, the Court may direct the defendant to file the written statement of his defence, if any, on the date of his appearance and cause an entry to be made to that effect in the summons.

(2**)** A defendant to whom a summons has been issued under sub-rule (1) may appear-
(a**)** in person, or
(b**)** by a pleader duly instructed and able to answer all material questions relating to the suit, or
(c**)** by a pleader accompanied by some person able to answer all such questions.
(c) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

The foundation of order 5 CPC, is the idea that no one should go unheard. When a lawsuit is filed against a defendant, the court is required to serve the defendant with a summons to appear in court. In actuality, procedural guidelines were established by the Code of Civil Procedure, 1908, to oversee the trial of a civil claim from the beginning to the end. Following the filing of a lawsuit, the party filing the lawsuit must serve the opposing party's summons.

A **service of summons under CPC** is a legal document served to a party to a legal case by a court. A summons is issued when someone is the subject of a legal action or when someone needs to appear in court as a witness in a proceeding. This ensures that the person will be present on the scheduled date of the proceeding. When a plaintiff files a lawsuit against a defendant, the court orders that the defendant be served with a summons in order to guarantee a fair trial.

Objectives of summons in CPC

- Notifying someone of any legal action which has been initiated against them is vital.

- The defendant is given the chance to make his case and tell his side of the story.
- The dictum "*Audi Alteram Partem*," which translates to "hear both sides," is the foundation of summons.
- Furthermore, it guarantees fair proceedings and a fair trial in accordance with the principles of natural justice.
- It aids in guaranteeing the attendance of any party directly or indirectly involved in a lawsuit before the court, including witnesses and accused parties.
- To generate the required paperwork.

Types of Summons under CPC

- **Civil Summons:** In a civil case under the CPC, the defendant receives a summons to appear in court. It serves as a means of alerting the accused that a case has been filed against them in court. It is typically served in situations involving contract violations, damage suits, orders for an injunction, lost items, etc.
- **Criminal Summons:** A criminal summons is a summons to appear in criminal court issued in accordance with the Criminal Procedure Code. The court will list the charges and supporting documentation for the criminal summons in the document and produce **summons to witness under CPC.**
- **Administrative Summons:** When we break the law, these are sent by the administrative bodies. The primary administrative summons given out by the law is labour court or tax authority summonses.
- **Substituted Service of Summons:** This is an exemption to the standard summons procedure under the CPC. In order to grant a substituted service of summons, the court must be persuaded that there is sufficient evidence to conclude that the defendant is purposefully avoiding serving the summons, necessitating the use of an alternative method of service.

Content of Summons under CPC

Each summons should state its intended use, such as the resolution of a dispute or the suit's ultimate determination. The court-appointed appearance date must be stated in the summons, and it must not be an unreasonable date for the defendant to present and respond to the lawsuit.

Modes of service of Summons under CPC

Personal or Direct Service:

- In this manner, a copy of the summons is sent to the individual in question, his agent, or any other person acting on their behalf; the recipient of the summons is required to acknowledge receipt of the document.
- The officer delivering the summons has an obligation to make sure that it is served correctly and to affix an endorsement that details the date, time, and mode of service, the name and address of the recipient, and the witness to the summons delivery.

- The order's rules 10- 16 and Rule 18 address direct or personal service.

Service by the Court

- Rule 9 of the Order addresses summons served by the court.
- It stipulates that the court official must serve the summons to the defendant if he lives within the court's jurisdiction.
- It may also be served by authorized courier service, mail, fax, message, email, or other means; however, if the defendant does not reside in the jurisdiction, the officer of the court in whose jurisdiction he resides must serve it.

Service by Plaintiff

- Rule 9A of the Order states that the plaintiff may request permission from the court to serve the defendants with a summons.
- In addition to making sure the defendant summons accepts the service, he must provide a copy of the sealed and signed summons signed by the judge or another officer designated by the judge.
- The court will resend the summons as well as serve it to the defendant if they do not accept its service or if it is not possible to serve it in person.

Substituted Service

- A method of serving a summons to defendant in CPC that is used in lieu of the customary method is known as substituted service.
- Rules 17, 19, and 20 of the Order specify two types of replacement service.

Summons by Post

- The Amendment Act of 1976 eliminated a previous provision in the Code that allowed the summons to be served by mail in accordance with Rule 20A of the Order.

The issue and service of summonses to the defendant are explicitly covered by order 5 CPC. It offers a number of guidelines about the issuance of summonses and the methods of service for them.

Similarly, Section-**282 of the I. T. Act, 1961 says:-**

(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (Act 5 of 1908).

(2) Any such notice or requisition may be addressed—

(*a*) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family;
(*b*) in the case of a local authority or company, to the principal officer thereof;
(*c*) in the case of any other association or body of individuals, to the principal officer or any member thereof;
(*d*) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

Again, Rule-127 of I.T. Rules, 1962 says:-

(1) For the purposes of sub-section (1) of sction-282, the addresses (including the address for electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereinafter) in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2).

(2) The addresses referred to in sub-rule (1) shall be-
(a)for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282-

(i)the address available in the PAN database of the addressee; or
(ii)the address available in the income-tax return to which the communication relates; or
(iii)the address available in the last income-tax return furnished by the addressee; or
(iv)in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:

Provided that the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorized by such authority issuing the communication:

Provided further that where the communication cannot be delivered or transmitted to the address mentioned in item (i) to (iv) or any other address furnished by the addressee as referred to in first proviso, the communication shall be delivered or transmitted to the following address:-

(i) the address of the assessee as available with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of the said Act); or
(ii) The address of the assessee as available with the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or
(iii) the address of the assessee as available with the insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938); or
(iv)the address of the assessee as furnished in Form No.61 to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation) under sub-rule (1) of rule 114D; or

(v)the address of the assessee as furnished in Form No.61A under sub-rule (1) of rule 114E to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation); or
(vi)the address of the assessee as available in the records of the Government; or
(vii)the address of the assessee as available in the records of a local authority as referred to in the Explanation below clause (20) of section 10 of the Act.

(b)for communications delivered or transmitted electronically-
(i)e-mail address available in the income-tax return furnished by the addressee to which the communication relates; or
(ii)the e-mail address available in the last income-tax return furnished by the addressee; or
(iii)in the case of addressee being a company, e-mail address of the company as available on the website of Ministry of Corporate Affairs; or
(iv)any e-mail address made available by the addressee to the income-tax authority or any person authorized by such income-tax authority

(3) The Principal Director General of Income Tax (Systems) or the Director General of Income Tax (Systems) shall specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication.

The Information Technology Act, 2000 says:-

2 (d) "affixing electronic signature" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of digital signature;

2(p) "digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

2(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

2(za) "originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

Similarly, Section 13 in The Information Technology Act, 2000 says-

Time and place of dispatch and receipt of electronic record.-

(1) Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:-

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,-

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

The communication in electronic form has been prescribed in Rule 127 A of the Rules 1962 which provides a procedure for issuance of every notice or other document and the e-mail in electronic form/electronic mail which has to be issued from the designated e-mail address of such income tax authority.

Thus, after digitally signing the notice the income tax authority has to issue it to the assessee either in paper form or through electronic mail. Sub-Section (1) of Section 13 of the Act 2000 provides that dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. The aforesaid sub Section (1) of Section 13 indicates the point of time of issuance of notice. Therefore, after a notice is digitally signed and when it is entered by the income tax authority in computer resource outside his control i.e. the control of the originator then that point of time would be the time of issuance of notice.

The words "**issue**" or "**issuance of notice**" have not been defined under the I.T.Act,1961. However, the point of time of issuance of notice may be gathered from the provisions of the Act, 1961, the Rules, 1962 and the Information Technology Act, 2000, as discussed above. Similar would be the position if the meaning of the word "issue" may be gathered in common parlance or as per dictionary meaning.

In Chamber's Twentieth Century Dictionary, the relevant meanings given to the word "**issue**" are act of sending out; to put forth; to put into circulation; to publish; to give out for use. In the New Illustrated Dictionary, the relevant meaning attributed to the word "issue" is come out; be published; send forth ; publish ; put into circulation.

The New Lexicon Webster's Dictionary of the English language 1988 edition its meaning of the word "**issued**" as under:-

"issue means- a flowing, going or passing out || a place or means of going or flowing out, outlet || a publishing or giving out || something published or given out || an outcome, result, no one knows what the final issue will be || a question, point etc. under dispute or discussion, a matter of concern || (med.) a discharge of blood etc. || (med.) an incision made to induce such a discharge || (law) offspring at issue in disagreement || in dispute to bring (or put) to an issue to cause to reach the point where a decision can and must be made to join issue to take a conflicting view to take issue to disagree 2. v. pres. part. is-su-ing past and past part. is-sued v.i. to come or flow forth || to be derived, result | (law) to be descended || to be put into circulation|| v.t. to publish or give out || to put into circulation, to issue a new coinage [O.F. issue, issued"

Gujarat High Court has considered similar issue in the context of Section 149 of the Act 1961 and held, as under:-

"The expression "issue" has been defined in Black's Law Dictionary to mean "To send forth; to emit; to promulgate; as, an officer issues orders, process issues from court. To put into circulation; as, the treasury issues notes. To send out, to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding. When used with reference to writs, process, and the like, the term is ordinarily construed as importing delivery to the proper person, or to the proper officer for service etc."

In P. Ramanathan Aiyer's Law Lexicon the word "issue" has been defined as follows:

"Issue. As a noun, the act of sending or causing to go forth; a moving out of any enclosed place; egress; the act of passing out; exit; egress or passage out (Worcester Dict.); the ultimate result or end.

As a verb, "To issue" means to send out, to send out officially; to send forth; to put forth; to deliver, for use, or unauthoritatively: to put into circulation; to emit; to go out; to go forth as an authoritative or binding, to proceed or arise from; to proceed as from a source (Century Dict.)

Issue of Process. Going out of the hands of the clerk, expressed or implied, to be delivered to the Sheriff for service. A writ or notice is issued when it is put in proper form and placed in an officer's hands for service, at the time it becomes a perfected process.

"Any process may be considered "issued" if made out and placed in the hands of a person authorized to serve it, and with a bona fide intent to have it served."

Conclusion:-

This is to note here that a small business man doesn't have funds to appoint one accountant having knowledge in computer and make correspond of letters / documents etc. with the

Department electronically. He ultimately depend on one Tax Professional for filing of return as well as communications to be made electronically with the Department.
One Tax Professional having at least one hundred assessees as clients also can't afford time to check the email(s) and the portal to verify the communications of the Department made electronically either daily or weekly once.

Neither Union Government nor State Governments have any plan to educate the assessees how to operate computer and carry on communication electronically.

It is the big business men / corporate sector who can afford to employ persons to verify and communicate with the Department in case any notice or order comes electronically.

Where notices or orders sent through email or uploaded in the portal are left un-noticed by the assessee or say not served on the assessee, higher forums or courts take a lenient view to set-aside the case to the lower forum to adjudicate the same properly after allowing sufficient opportunity to the assessee to represent his case before him.

Income Tax Appellate Tribunals generally direct that at least one notice should be sent to the assessee in physical form so that he can't take a stand that he wasn't aware of the facts of the case before an order was passed exparte and prohibitory order was sent to the Bank of the assessee for his non-compliance to the notices of the Department.

But here another question is put forth before the learned readers that in case Government amends the Act and Rules inserting the provision that the word "**issued**' shall be inserted in place of "**served**" then it is presumed that Ministry of Finance intends that the notice or order issued to the assessee by the Department electronically is to be regarded as served on him. The assessee can't take the plea that any notice or order wasn't served on him.
Thus every small assessee should be computer savvy, learn how to visit the portal, reply to the notice and take steps in time before any order was passed against him, otherwise, delay can't be condoned where appeal was filed after the order came to his knowledge i.e. beyond the due date of filing of the appeal.
In case the above proposal of Ministry of Finance, Government of India becomes an Act then the sorrow of the assessees of India will knew no bounds. At the same time the amendment will contradict the purpose of the law because the mother law i.e. Code of Civil Procedure, 1908 says that the notice or order must be 'served' on the concerned person. Nowhere is it mentioned that once the notice or order was issued through any mode shall be construed as served on the assessee.

STREAMLINED THE TAX SYSTME IN INDIA

LAMBODAR HOTA (TAX CONSULTANT)

The Goods and Services Tax (GST) is a successor to VAT used in India on the supply of goods and services. GST is a digitalized form of VAT.

The idea of a nationwide GST in India was first proposed by the Kelkar Task Force on Indirect taxes in 2000. The objective was to replace the prevailing complex and fragmented tax structure with a unified system that would simplify compliance, reduce tax cascading, and promote economic integration. The Empowered Committee of State Finance Ministers prepared a design and roadmap, releasing the First Discussion Paper in 2009. The Constitution Amendment Bill was introduced in 2011 but faced challenges regarding compensation to States and other issues.

After years of deliberation and negotiations between the Central and State Governments, the Constitution (122nd Amendment) Bill, 2014, was introduced in the Parliament. The Bill aimed to amend the Constitution to enable the implementation of GST. The Constitution Amendment Bill was passed by the Lok Sabha in May, 2015. The Bill with certain amendments was finally passed in the Rajya Sabha and thereafter by the Lok Sabha in August, 2016. Further, the Bill has been ratified by the required number of States and has since received the assent of the President on 8th September, 2016 and has been enacted as the 101st Constitution Amendment Act, 2016. The GST Council was notified w.e.f. 15th September, 2016. For assisting the GST Council, the office of the GST Council Secretariat was also established.

The GST Council, consisting of the Union Finance Minister and representatives from all States and Union Territories, was established to make decisions on various aspects of GST, including tax rates, exemptions, and administrative procedures. It played a crucial role in shaping the GST framework in India. On 1st July, 2017, GST laws were implemented, replacing a complex web of Central and State taxes. Under the Indian GST, goods and services are categorized into different tax slabs, including 5%, 12%, 18%, and 28%. Some essential commodities are exempted from GST, Gold and job work for diamond attract low rate of taxation. Compensation cess is being levied on demerit goods and certain luxury items.

To prepare for the implementation of GST, extensive efforts were made to build the necessary technological infrastructure and train tax officials and businesses. GST Network (GSTN), a not-for-profit company, was created to provide the IT backbone for the GST system, including taxpayer registration, return filing, and tax payments.

Since its implementation, the Indian GST has undergone various amendments and refinements based on feedback from businesses and the evolving economic scenario. While the GST implementation initially posed challenges for businesses in terms of understanding the new compliance requirements and adapting to the changes, it has gradually settled into the Indian tax landscape.

It can be said that the history of GST in India showcases a monumental shift in the country's tax structure, aiming to create a more unified, efficient, and transparent indirect tax regime for the benefit of businesses and the economy as a whole.

GST and Centre-State Financial Relations

The implementation of GST has brought about a fundamental shift in the financial relations between the Central Government and the State Governments in India. GST is a unified tax system that replaced multiple indirect taxes levied by both the Central and State Governments. Under GST, both the Central and State Governments share the authority to levy and collect taxes on goods and services. This has led to greater harmonization and uniformity in the tax structure across States, promoting economic integration.

The GST system follows a dual structure, comprising Central GST (CGST) and State GST (SGST), levied concurrently by the Central and State governments, respectively. Additionally, an Integrated GST (IGST) is levied on interstate supplies and imports, which is collected by the Central Government but apportioned to the destination state.

In terms of revenue distribution, the GST Council plays a crucial role. It is a joint forum consisting of the Union Finance Minister and representatives from all States and Union Territories. The Council makes decisions on various aspects of GST, including tax rates, exemptions, and revenue sharing between the Central and State Governments. Except for one decision, all decisions of the Council were taken by consensus.

To ensure a smooth transition to the GST regime and address any revenue losses incurred by the States, a compensation mechanism was established. The Central Government was committed to providing compensation to the States for any revenue shortfall during the initial years of GST implementation. This compensation was meant to bridge the gap between the expected revenue growth and the actual revenue collected by the States.

It has fostered greater coordination, reduced tax barriers, and streamlined the tax system, leading to improved efficiency and competitiveness in the Indian economy. The successful implementation of GST relies on a cooperative and consensus-based approach between the Central and State Governments. It has transformed financial relations, ensuring greater coordination and efficiency in the Indian tax system.

Salient Features of GST

Goods and Services Tax (GST) is a comprehensive indirect tax levied on the supply of goods and services in India. Here are some of the salient features of GST:

a. One Nation, One Tax: GST replaced multiple indirect taxes levied by the Central and State Governments, such as excise duty, service tax, value-added tax (VAT), and others. It brought uniformity in the tax structure across

India, eliminating the cascading effect of taxes.

b. Dual Structure: GST operates under a dual structure, comprising the Central GST (CGST) levied by the Central Government and the State GST (SGST) levied by the State Governments. In the case of Inter-state transactions, Integrated GST (IGST) is applicable, which is collected by the Central Government and apportioned to the respective State. Import of goods or services would be treated as inter-state supplies and would be subject to IGST in addition to the applicable customs duties.

c. Destination-based Tax: GST is a destination-based tax, levied at each stage of the supply chain, from the manufacturer to the consumer. It is applied to the value addition at each stage, allowing for the seamless flow of credits and reducing the tax burden on the end consumer.

d. Input Tax Credit (ITC): GST allows for the utilization of input tax credit, wherein businesses can claim credit for the tax paid on inputs used in the production or provision of goods and services. This helps avoid double taxation and reduces the overall tax liability.

e. GST would apply on all goods and services except Alcohol for human consumption. GST on five specified petroleum products (Crude, Petrol, Diesel, ATF & Natural Gas) would by applicable from a date to be recommended by the GSTC. Tobacco and tobacco products would be subject to GST. In addition, the Centre would have the power to levy Central Excise duty on these products. Exports are zero-rated supplies. Thus, goods or services that are exported would not suffer input taxes or taxes on finished products.

f. Threshold Exemption: Small businesses with a turnover below a specified threshold (currently, the threshold is ? 20 lakhs for supplier of services/both goods & services and ? 40 lakhs for supplier of goods (Intra-Sate) in India) are exempt from GST. For some special category states, the threshold varies between ? 10-20 lakhs for suppliers of goods and/or services except for Jammu & Kashmir, Himachal Pradesh and Assam where the threshold is ? 20 lakhs for supplier of services/both goods & services and ? 40 lakhs for supplier of goods (Intra-Sate). This threshold helps in reducing the compliance burden on small-scale businesses.

g. Composition Scheme: The composition scheme is available for small taxpayers with a turnover below a prescribed limit (currently ? 1.5 crores and ? 75 lakhs for special category state). Under this scheme, businesses are required to pay a fixed percentage of their turnover as GST and have simplified compliance requirements.

h. Online Compliance: GST introduced an online portal, the Goods and Services Tax Network (GSTN), for registration, filing of returns, payment of taxes, and other compliance-related activities. It streamlined the process and made it easier for taxpayers to fulfill their obligations.

i. Anti-Profiteering Measures: To ensure that the benefits of GST are passed on to the consumers, the government established the

National Anti-Profiteering Authority (NAA). The NAA monitored and ensured that businesses do not engage in unfair pricing practices and profiteering due to the implementation of GST. All GST anti-profiteering complaints are now dealt by the Competition Commission of India (CCI) from 1st December, 2022.

j. Increased Compliance and Transparency: GST aims to enhance tax compliance by bringing more businesses into the formal economy. The transparent nature of the tax system, with the digitization of processes and electronic records, helps in curbing tax evasion and increasing transparency.

k. Sector-specific Exemptions: Certain sectors, such as healthcare, education, and basic necessities like food grains, are given either exempted from GST or have reduced tax rates to ensure affordability and accessibility.

l. Accounts would be settled periodically between the Centre and the States to ensure that the credit of SGST used for payment of IGST is transferred by the Exporting State to the Centre. Similarly, IGST used for payment of SGST would be transferred by the Centre to the Importing State. Further, the SGST portion of IGST collected on B2C supplies would also be transferred by the Centre to the destination State. The transfer of funds would be carried out on the basis of information contained in the returns filed by the taxpayers.

It's important to note that the GST framework is subject to changes and amendments are passed based on the evolving needs of the economy and the Government's policy decisions.

Goods and Services Tax (India)

ABOUT THE PRACTICE AND LAWS

Sidhartha Sankar Mohapatra

An American Poet Henry Longfellow said "The heights of great men reach and kept, were not attained by sudden flight, but they, whilst their companions slept, were toiling upward in night". The above words will equally apply to the Tax Advocates, GST Practitioner and other Tax Professionals, as no doubt they will have toiled in to the night to draft the writ petitions, replies to show cause notices, grounds of appeals etc. The Pen is mightier than the sword. Confusion in a drafting can be astonish and result in unforeseeable consequences, surely that cannot be the intent while drafting. But the Indian economy now has changed, and with that change has also come a new breed of both businessmen and tax professionals all over the country. The modern approach ignores the maxim "Law is for justice and not justice for law", a principle which was historically applicable particularly to Tax cases. As a result, disputes arising from the orders passed by the Tax Authorities to day can be long drawn out and expensive undertakings, whether parties seek to resolve them before a court or by arbitration.

Drafting:

Drafting is an art and not a mere skill and that every artist has his/ her own way of doing it. Every Tax Professional/ Practitioner must know the art of drafting. The primary objective of this article is to make the reader understand what is drafting, why it is needed in today's tax practice and what are the basic points to be kept in mind while drafting the replies to show cause notices, petitions, grounds of appeal etc. This article does not intend to provide legal opinion, but just practical guidance for drafting.Effective drafting entails understanding how the actual supply of goods and service or both will actually takes place, familiarity with applicable laws, circulars, notifications, press note, relevant case laws and their implications, knowledge and command over language and the ability to concisely articulate these in a document and may continue to evolve during the life of the case. Contradictory words in a petition, reply of objection shall result in much litigation, pain and expenses for the clients. To put it simple words, drafting skill is one's ability to express one's through process in writing. Metaphorically speaking, every case is like a new canvas for a draftsman. A Tax Professional (Painter) is supposed to paint his client's case on the canvas. The painter must be clear in his thoughts, artistic and the meaning of the painting must be clear and unambiguous. One should bear in mind that a document is never drafted for the academic pleasure of the draftsman. A document is a living thing- it has to live and face the scrutiny of several interested parties (the client, adjudicating authorities, courts etc.) Therefore, it has to be carefully crafted so as to protect client's interest

to the utmost, be legally compliant and legible to all. Tax Professional has to be an excellent wordsmith and storyteller.

Tax Professional Needs:

(a) Knowledge of GST Act and Rules;
(b) Knowledge about the client and its business;
(c) Analytical skills;
(d) Ability to read between the lines; and
(e) Foresightedness.

Pleadings:

"Pleading" is not defined under any of the fiscal laws. When it is not defined under the fiscal laws, one has to follow/ consult the 'Code of Civil Procedure, 1908'(CPC). According to Rule 1 of Order VI of CPC defined as 'Pleading' shall mean plaint or written statement. Pleading being foundation of litigation must contain only relevant material by excluding irrelevant and unnecessary information. To gather true spirit behind a plea it should be read as a whole. This does not distract on from performing his obligations as required under a statue. As per Rule 2 of Order VI of CPC - Pleading to state material facts and not evidence.

1. Every pleading shall contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be but not the evidence by which they are to be proved.
2. Every pleading shall, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.
3. Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Pleadings of parties being foundation of the case cannot be given up and set out a new and different case.

As per Rule 4 - Particulars to be given where necessary - In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. The above Rules of Order VI to the CPC are exemplary and according to need of the draftsman, the pleadings may change from case to case basis. Since no book on drafting and pleadings in GST, one has to resort to his own style of drafting but following with rules. I am enumerating a few of such rules or points for the benefit of the readers. While venturing to draft a reply to the show cause notice, three components should bear in mind.

a) Analysis of Show Cause Notice;
b) Evidence or information and Grounds to issue Show Cause Notice;
c) Identifying the missing points in the Show Cause Notice.

To submit objections in reply to show cause notice, an opportunity shall be provided to the registered taxable person. Allowing time to file objections is affording an opportunity, in compliance with the principles of natural justice or otherwise it shall be treated as denial of the opportunity. Audi Alteram Partem principle should be followed. Subject to maximum of three adjournments can be granted by the GST authorities provided sufficient reasons shown.

The following points to be kept in mind while drafting the reply objections or writ petitions etc.

i) After receiving the Show Cause Notice, one should read the Show Cause Notice

like a student reads the question paper in the Examination Hall;

ii) One should understand the contents of the Show Cause Notice and note down the contentions averred by the authorities and jot down the point wise to enable to draft the reply;

iii) Ensure that all the points covered under the draft as reply to Show Cause Notice, because the reply to the Show Cause Notice is heart to the litigation. The adjudicating authorities cannot go beyond the Show Cause Notice;

iv) It is most important to ensure that, the Show Cause Notice or Notices or Summons or Orders of assessment is served on registered taxable person through the specified mode of service;

v) And the said Show Cause Notice or Notices or Summons or Orders of assessment are duly signed by the authority as prescribed under Section 26(3) of the Act and as conferred under the Act.

vi) And the said Show Cause Notice or Summons or Orders of assessment are duly sent under Documents Identification Number (which is mandated by CBIC) as issued by the Central Tax Department. (which is not mandated by the State Authorities);

vii) Drafting should be in simple and lucid language, don't use any argumentative words or language.

viii) The points of defence should be point by point in a tabulated format, for easy and better understanding;

ix) The drafting should be confined to the law enunciated on the subject, unless it is demanding the situation to refer to any case laws, that too the clear and direct bearing on the relevant subject, it is advised to refer such case laws only, if any iota of doubt arises in the mind of draftsman, then he/ she should not resort to refer the case law. Don't base on the head note of the case law alone, it is advised to read the entire text of case law for at least three times so that one can adjudge the facts of the case on hand and facts of the judgement;

x) List of date and events should be given in a chronological order, which plays most important role in the drafting and pleadings.

Rome was not built in a day. Drafting is something which can be learnt, cultivated and improved with practice. Like sports persons or other artisans, drafting skills can also improve with time and experience. Finally, a good draftsman is one who is able to anticipate how a reply is likely to be interpreted by a court or departmental offcials and try and ensure that the Court will decide as per the clear intent of the parties which must be easily found in drafting.

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Competition Law and Privacy : A Tussle

Pratik Nayak

The digital sector has grown rapidly in India and the world in the last ten years. Due to this massive growth, various new business models have emerged, new markets have been opened, and significant efficiencies have been realised. But in multiple instances, it has been found that tech companies use these massive data pools to control these digital markets and cut short their competition.

From a broader perspective, data today hold immense value for the digital economy's and AI's progression. Therefore, it has become crucial for these tech companies to collect these data pools to survive in this competitive market. Every single piece of information nowadays is available at our fingertips. Various factors such as consumer-collected data and algorithmic structure, have helped companies to reach this stage.

Due to various concerns, the Competition Commission of India has interrogated multiple participants, including Google and Meta. Yet, there are also worries about using competition law (rather than consumer and privacy legislation) to handle such issues.

What are Competition Laws?

When a company uses its power to create barriers for other companies to enter the same market is known as anti-competitive behaviour. This behaviour can lead to market distortion, which can cause increased pricing of commodities, low-quality service to consumers, and a decline in innovation and upgradation of commodities in the market. Companies take the help of these techniques to benefit themselves at the cost of the consumer's expense.

Examples of anti-competitive practices include price manipulation, mass boycotts, exclusive vendor agreements, and trade association restrictions. There lies a fine line between company tactics and anti-competitive behaviour, which these companies take massive advantage of. An open and free market where there is fair competition is beneficial for companies and consumers both. Competition helps companies to earn more customers and grow their market share by constantly improving the quality of their products, maintaining low prices, and looking for more efficient manufacturing techniques. The Monopolistic Restrictive Trade Practices Act, which was enforced in 1969, took inspiration from the Resale Prices Act of 1964 and the Restrictive Trade Practices of 1956 to set up the guidelines regarding competition.

The Monopolistic and Restrictive Trade Practices Commission was formed with the help of this Act, and its duty was to look after the restrictive and monopolistic trade practices. But due to the LPG policy in 1991, several economic changes were happening in India, which led the lawmakers to think of new ways to solve these problems. After many years of debates and discussions, the Competition Act of 2002 was enacted. The new act got the President's assent in January 2003.

Role of Data Concentration in Anti-Competitive Arrangements

With the help of the Competition Act, the Competition Commission of India is entrusted with the obligation to "prevent practices having an unfavourable effect on competition and sustain competition in the market". To regulate these digital marketplaces, the CCI finds it challenging to enforce the Competition Act because of the nature of these markets, as they vary with the prevalent legal and economic ideas about competition injury.

Though the companies in this space tried to license their data utilising the Copyright Act and own it exclusively, but the major intellectual property drawback to doing this was that the data controller had to showcase the originality of these data pools. But this way would be challenging to process as it is time-consuming and would directly benefit the rival companies.

As a result, a second way to achieve legitimacy is through Competition Law. According to its regulations, Competition Law prohibits unfair competition practices that threaten the interests of competitors. Because Big Data firms spend a lot of resources and time creating algorithms that enable them to collect and analyse big data for the benefit of their customers, they should be able to claim ownership of this data under competition law. An infringer or his competitive company may deny the controller these rights if they can prove to the competition commission that they have a legitimate right over the data collection.

Is Data Concentration a Threat?

Data collected by these companies can lead to severe and anti-competitive antitrust issues. In recent years there has been a massive rise in the expansion of e-commerce; all authorities dealing with competition and antitrust authorities are focusing on how these companies use these data and how they affect the industry and the value of their competitors. Access to these data pools means having information about the users and the algorithmic structure in billions of gigabytes, which can negatively impact the market.

An open-source environment can create problems for general users, such as government surveillance of communications, account hijacking and physical searches of cell phones without security features. The media is very well aware of these issues, but there needs to be more effort concerning educating the general masses about the same. It seems odd that there is a contrast between accepting recognised cases and a somewhat pessimistic attitude toward them.

According to a study from 2020, the CCI stated that:

"Network effects brought on by massive quantities of data collection enable corporations to compete on a level unrelated to price and establish a "winner takes all" paradigm. Organisations like Facebook have the "potential to gather and handle considerable volumes of user data" when it comes to data consumption. Whatsapp Suo Moto order that competition law must examine whether excessive data collection and how that data is subsequently used or otherwise shared in a data-driven ecosystem may have anti-competitive implications, requiring antitrust scrutiny."

Conclusion

Digital Security often seems like a base-level issue, while most media organisations focus mainly on the economic and sociological problems that trouble their tenability. As digital dangers are often unnoticeable and don't hold much value, therefore they are often neglected. The time has come for more efficient and inclusive data protection laws to be implemented in India as soon as possible.

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APPROPRIATE MODE OF SERVICE OF NOTICES NEEDS SOME RELAXATION AND FLEXIBILITY UNDER THE LAW

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Though service of notice through Electronic mode system is one of the flexible approaches but the availability of infrastructural facilities in rural as well as remote and inaccessible areas are fully neglected. The facilities are unavailable because of absence of electronic devices and lack of knowledge, skill and other modern facilities there to seek better services.

The mode of Electronic service has no accessibility in rural areas and Section 282 of the Income Tax Act'61 under Chapter XXIII provides the service of Notices or summons, requisitions or other communication etc are to be made either by telephone or transmission of documents as prescribed under the rules. Even sending copies thereof by posts or under courier services as have been prescribed under the Civil Procedure Code and the corresponding rules stood therein but the form of electronic record under Chapter IV of the Information Technology Act is totally beyond the knowledge of Rural people which need some time to get them acquainted and accustomed and now to defer the system of adopting electronic devices of dispatch of notices etc. It is quite common and appreciable that many of the assessees live in rural and backward areas having no electronic and infrastructural facilities and even do not know the process of e-mail etc. Many of them have no scope of operating e-mail address of friends and relatives due to unawareness of electronic system, even transmitting or carrying on correspondences using e-mail or remitting any amount by Phone Pay. These systems are quite unknown to them. If this electronic system or mode of service of notices and requisites or summons are sent may not serve the purpose and the desire of the people. Many of the assessees and tax payers of rural areas do not know how to operate the Computer and other electronic system and even network facilities and signals in Mobile phones are not available to them. Keeping in view of the matter and looking into the inconveniences of the public of the Rural and remote areas the imposition of the electronic system of service of notices through electronic devises should be deferred and kept in abeyance for some times to allow the public to grow and get acquainted accustomed and well versed with the system. Even people walk miles of distance and climb to hill tops or sit on big trees to avail signals facilities for operation of electronic devices as they know within their limited sphere.

Other limbs of the system as provided and available under the CPC (Civil Procedure Code) by transferring, dispatching and sending of the notices by post or courier services or even speed posts can serve the purpose but the electronic e-mail messages and electronic transmissions will be in vain and no purpose will be served in the rural and interior parts of the states specifically in Odisha and other neighboring states of the Country.

Now-a-days the assessees are coming and approaching the authorities with Bunch of Notices and orders dispatched by the authorities of the department on different occasions in the prevailing electronic modes but the delay occurred about three months, four months and years also because the assessees are not accustomed to the system and the devices having no scope in the

present era to give them relief and relaxation. Accordingly they feel the system is "Latin and Greek" to them. Therefore the authorities under the law in many of the Principles decided by Hon'ble Apex Court and the Hon'ble Bombay and Delhi High Courts relating to SBI cards and service of Pvt. Ltd. Order XXI rules of Civil Procedure Code 1908 clearly given the facilities for service of notice even on Cell phone numbers and other messages transmitting through media under the electronic process and by other appliances are of no use.

The department is mostly acquainted and furnish the requirement and expect compliance of the assessee are unavailable causing harassment to innocent public to get the facilities and remedy casted under the law which have no application.

Hon'ble Bombay High Court in Meena Prints Pvt. Ltd. Vrs. Vahini Enterprises directed the plaintiff to serve notices of motion in an action of trade mark infringement by courier and whatsapp / email if possible. Naturally to get our people educated in that line and acquainted as well as accustomed to the system will take some time and we should not impose and burden the public of remote areas. The change of system by overnight cannot be expected which would be cumber-some or deteriorate the system causing unnecessary hardship. Even may be accepted that the slogan of the Department was that each of the tax payer is a Nation builder and go to prove its obesity because of its device in an unknown and during Corona Pandemic in 2019 the service of notice could not be possible and looking into the situation and the condition of the society limitation itself was extended which should be appreciated for the time being.

Accordingly even if is not abolished but deferring the system for the time being till the common man is educated with the device shall get the system operated.

Now the section 282 of the IT Act should get operated in both the ways by sending notices by registered/ speed post and supply them the copies of Note sheets and the proceedings to expect better compliance of the affected assessees belong to rural and underdeveloped areas. What better can be possible in the service of notices other than e-mails should be adopted without burdening the people having no knowledge or capacity to learn now for the compliance U/s282 of the IT Act.

"Paying tax is not a punishment. It is a responsibility.

- Chris Mathews.

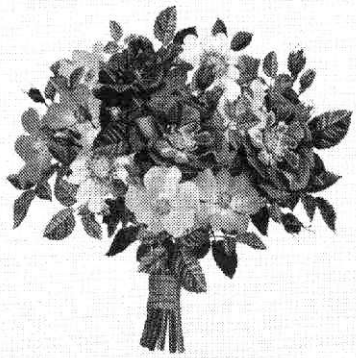
Digital Revolution of Taxation

Tusar Kanta sahoo, Advocate

In the modern era, as technology continues to reshape various aspects of our lives, the realm of taxation stands at the forefront of digital transformation. The traditional image of tax professionals buried in piles of paperwork is rapidly evolving into a streamlined, efficient, and digitally-driven landscape. From cloud computing to artificial intelligence, the digitalization of taxation is revolutionizing how individuals and businesses interact with the tax system.

One of the most noticeable changes in tax practice is the widespread adoption of specialized tax preparation software. Gone are the days of manually filling out tax forms and performing calculations by hand. Today, tax professionals harness the power of software. These tools not only simplify the process of organizing client data but also enable accurate calculations and efficient filing of tax returns. In the digital age, data is king, and tax professionals are tapping into its potential to provide valuable insights to clients. Advanced data analytics tools enable tax practitioners to analyse large volumes of financial data, identify patterns, and uncover potential tax-saving opportunities. Whether it's optimizing deductions for individuals or devising tax-efficient strategies for businesses, data-driven insights are reshaping the way tax advice is delivered Robotic Process Automation (RPA) has become a valuable asset in automating repetitive tasks in tax preparation. From data entry to compliance checks, RPA tools free up valuable time for tax professionals to focus on strategic planning and client advisory services. Additionally, artificial intelligence (AI) is being utilized to scan documents for errors, flag potential compliance issues, and even provide personalized tax recommendations based on individual circumstances.

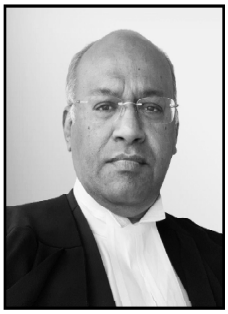
The digitalization of taxation represents a seismic shift in the way tax professionals operate. Embracing this digital revolution is not just a matter of staying current; it is a strategic imperative for remaining competitive and delivering unparalleled value to clients. By harnessing the power of technology, tax practitioners are poised to navigate the complexities of the modern tax landscape with agility, efficiency, and innovation.



"Law is nothing easy. But the best reason of wise in applied for aged to the transaction and business of mankind."

- Abraham Lincon

ALTERNATIVE DISPUTE RESOLUTION IT'S OBJECTTIVES AND PRINCIPLES



BIBEKANANDA MOHANTI

The justice delivery system in India in giving proper justice to the litigants and the citizens of India in the shortest possible time became such a problem in the country that new solutions were searched. Various Tribunals were an answer to this search. In India we have a number of these Tribunals. However the fact is that even after the formation of so many Tribunals the administration of Justice in a specific time frame is still not possible. Things have not improved much. Therefore the solution for speedy justice was never formation of tribunals but something else.

This was not the problem in India alone. It was the problem throughout the globe and in every country. The scene of huge arrears of cases pending in different Courts throughout the world led to J.S. Auerbach observing that :

"Litigation has become an inevitable stage in the life cycle-slightly beyond adolescence but before maturity. It is virtually impossible to survive litigation and remain solvent, but it is occasionally possible to endure it and remain sane. As a modern ordeal by torture, litigation excels, it is exorbitantly expensive, agonizingly slow and exquisitely designed to avoid any resemblance to fairness or justice. Yet in strange and devious ways it does settle disputes – to everyone's dissatisfaction."

And in India, our very own Nani Palkivala put it in his inimitable style when he said : "May I turn to the situation in India which has the second largest number of lawyers in the world. While it is true that justice should be blind in our country it is also lame. It barely manages to hobble along. The law may or may not be an ass, but in India it is a snail; it moves at a pace which would be regarded as unduly slow in the community of snails. A law suit, once started in India, is the nearest thing to eternal life ever seen on this earth. Some have said that litigation in India is a form of fairly harmless entertainment. But, if so, it seems to be a very expensive way of keeping the citizens amused. If litigation were to be included in the next Olympics, India would be quite certain of winning at least one gold medal."

This shows how our justice delivery and dispensing system works. A case at hand states that, A landlord has to spend, without any guarantee for getting his own house vacated even when he needs it urgently and the tenant has got his own house built. The Supreme Court observed on April, 9, 1997 in a judgement reported in (1997) 5 SCC 457.

"This is one of the classic instances of the cases holding the law that delay defeats justice. The landlord filed a suit in 1966 for eviction of the tenant for personal occupation and today after 31 years we are disposing of the matter at the level of this Court."

In this case the need extinguished by lapse of time and the courts simply played the role of a mute spectator. The landlord, who was just about to retire from private service having four unmarried grown-up daughters and one son aged 24 years had filed an application in 1966 for eviction of the tenant, as he wanted to set up a business. After 31 years when the matter came up for hearing in the Supreme Court in 1997, the landlord was not in a position to start any business as he was 87 years old, the daughters had been married and his son, who was 24 years of age when the application was filed was to retire in another four and a half years. The Supreme Court decided, under these circumstances, the need of the landlady for her husband to set up the business can not be said to be subsisting.

WHO IS RESPONSIBLE ?

Undoubtedly, it is the system which is at fault.

Our judges have always been playing a major role in devising ways and means as to how the arrears would reduce. The arrears of cases has however drastically reduced in the Supreme Court and other courts. Commenting on the trend of disposals. Mr. Ashok Desai the former Attorney General of India speaking at the Law Day Speech at New Delhi on 26th November 1996 said

"In some measure, this is due to better court management, including the use of computers. But I would like to acknowledge publicly that the real tribute for this disposal must go to the dedicated and extremely hard work put in by our judges. It is ironical that under our system the burden that a Judge has to carry goes on increasing in proportion to his elevation. The Supreme Court Judges are amongst perhaps the hardest working of any Judges. I was quite taken aback to learn that the briefs for the next day, specifically on the admission days, have to be delivered to them in a commercial vehicle or a tempo. Chief Justice Venkatachaliah used to quote the complaint of his colleague that until elevated to the Supreme Court, he thought that bonded labour was abolished. In fact, it is the occasional complaint of the Bar that the Judges are ready in a manner which is alarmingly disconcerting to the counsel who is less prepared than the lawyer briefed to argue the case. And the answer is not very flattering to the Bar."

Are we as law professionals not responsible for such huge arrears of cases ? The answer is – Yes.

Mr. Nani Palkivala speaking at the Law Day Speech at New Delhi on 26th November, 1996 said : "The fault is mainly of the legal profession. We ask for adjournments on the most flimsy grounds. If the judge does not readily grant adjournments, he becomes highly unpopular. I think it is the duty of the legal profession to make sure that it co-operates with the judiciary in ensuring that justice is administered speedily and expeditiously. It is the one duty of which we are totally oblivious."

The law makers in the country found this as an overwhelming problem and which made them to think that finally the judicial system of the country might crank down under the weight of arrears

and was most probably on the verge of collapse. All these factors led to the development of a by-pass for litigations i.e. Arbitration.

The Arbitration Act was passed by the Parliament but in a very short span of time it was also found that the arbitration was highly procedural and also caused huge delay in disposal of matters.

This led to Justice Krishna Iyer commenting on the said Act in his own words.

"Time consuming, complex and expensive court procedure impelled jurists to search for an alternative forum, less formal, more effective and speed for resolution of disputes avoiding procedural claptrap and this led them to the Arbitration Act, 1940 ("Act " for short). However, the way in which the proceedings under the Act are conducted and without an exception challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary.

Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the courts been clothed with "legalise" of unforeseeable complexity."

The main irony was that like other forms of litigation. Arbitration too proved futile. As the Arbitration Act of 1940 proved ineffective for early settlement of disputes by arbitration, the first major step taken in this direction was the introduction in Parliament of the Arbitration and Conciliation Bill, 1995. The provisions of the Bill were promulgated as Ordinances on 16th January 1996 and again on 26th March 1996. The Bill was finally enacted as the Arbitration and Conciliation Act, 1996 and was brought into force with effective from August 22, 1996. This Act, based on the Model Laws of International Commercial Arbitration and the Conciliation Rules, of the United Nations Commission on International Trade Law (UNCITRAL Model) provides the basis for the growth of the ALTERNATIVE DISPUTE RESOLUTION (ADR) movement in India on scientific lines. This legislation was hoped, will help to build confidence among parties intending to enter into long-term commercial relations with their counter parts.

In a developing country like India with major economic reforms under way within the frame-work of rule of law, strategies for swifter resolution of disputes for lessening the burden on the Courts and to provide means for expeditious resolution.

Thereafter the law experts thought of the next alternative to litigation. The result was Consensual Dispute Resolution (CDR).

CDR encompasses a variety of techniques e.g. meditation, arbitration, judicial settlement, early neutral evaluation, conciliations and settlement by Lok Adalat. CDR gives litigants the opportunity to settle disputes in a consensual manner, through more conciliatory, less formal and more flexible processes. It was thus designed to expand currently narrow remedial possibilities beyond purely win/loose conclusions.

Arbitration is entered into usually by contract, but renders a binding result. Arbitrators are selected by and serve at the expense of the parties. Arbitration, through less formal than litigation, is the most formal of the six CDR processes and results in an award similar to a final judgement.

The present Act of Arbitration also incorporates the provisions for conciliation. The matters which pertain to petty amounts can easily be disposed off, with both parties adopting the 'forgive and forget' attitude. However the problem comes when high amounts are at stake. For these matters we can have a panel of arbitrators, chosen by the High Courts and the Supreme Court, known for their integrity and uprightness. The new Act has widened the powers of the arbitrators to a large extent and thus a lot depends on their working.

As the globalisation of the economy is taking place at a rapid pace and the business is increasing, the disputes related to business are also increasing. The businessmen cannot afford to loose time in avoidable litigation. Hence, the commercial establishments are increasingly moving towards ADR. Among all the methods of ADR, the method of arbitration is the most popular. The construction contracts usually have an arbitration clause. After the enactment of the new Act, the arbitration proceedings have taken a new dynamic shape. Now there is no need to get the Award of Arbitral Tribunal to be made the rule of the Court. This is going to save a lot of precious time.

Another process is Fast-Track Arbitration.

A form of arbitration in which the arbitration award is rendered in a particularly short time and at reduced cost.

There is a lot of scope in trying the other methods of ADR like conciliation and mediation which can have dramatic results.

Here, I would like to remember the observation of John F. Kennedy in his Inaugural Address on the 20th of January, 1961 when he said :

"Let us never negotiate out of fear, but let us never fear to negotiate."

In contrast to arbitration, Conciliation, is non binding and confidential. If successful, conciliation results in a settlement of the dispute. Like arbitrators, conciliators are selected by and serve at the expense of the parties. Conciliation is less formal than arbitration, but is more evaluative than the facilitative process of most forms of mediation.

Settlement through Lok Adalat until recently was consensual, both in entry and in result. However, the 1987 Act, brought into force from late 1996, specifically permits suo-moto non-consensual court reference to Lok Adalat. The settlement process in auto accident cases tends to be more evaluative (like conciliation), while the process in family dispute tends to be more facilitative (like mediation). The Court selects the panels on an adhoc basis. The utilisation of Lok Adalats is coordinated through the lower courts under the authority of the Act.

Mediation involves a confidential meeting at any time during the law suit between the parties, their legal representatives and a neutral, third party who is a former judge or lawyer is a trained

facilitator at conflict resolution. As in other forms of consensual dispute resolution, prior to each session, the lawyers prepare the legal position and factual evidence in support of their clients positions. The mediator often allows the parties to voice their position in a joint session before meeting privately to discuss settlement opportunities. Frequently, the mediator shares with both parties or privately with each party an informed prediction of the outcome of the litigation, assuming it were to be proceeded.

Negotiation - A non-binding procedure in which discussions between the parties are initiated without the intervention of any third party with the object of arriving at a negotiated settlement to the dispute.

Conciliation–Mediation–Arbitration – A procedure which combines, sequentially, conciliation and where the dispute is not settled through conciliation/mediation within a period of time agreed in advance by the parties, an arbitration making the dispute reach a finality.

Alternate Dispute Resolution (ADR) mechanisms, such as arbitration, mediation, and negotiation, have gained significant popularity in India over the years. These mechanisms offer parties alternatives to traditional court litigation for resolving disputes. ADR processes are generally quicker than traditional court litigation, helping parties to resolve disputes in a more time-efficient manner.ADR can be more cost-effective compared to court litigation, as it often involves lower costs and can be more efficient in terms of resource utilization. The processes like mediation and arbitration offer a higher level of confidentiality compared to court proceedings, which can be beneficial for parties seeking to keep their disputes private. It provides greater flexibility and informality in resolving disputes, allowing parties to tailor the process to suit their specific needs and interests. Arbitral awards are generally easier to enforce across borders compared to court judgments, which can be advantageous for parties involved in international disputes. The ADR mechanisms can help reduce the burden on the traditional court system by diverting certain types of disputes to alternative forums for resolution, thereby contributing to the reduction of case backlogs.

However, despite these advantages, the success of ADR in India also faces some challenges, such as:

Awareness and Acceptance : There is still a need to create more awareness about ADR mechanisms among the general public and businesses in India to increase their acceptance and usage.

Quality of ADR Professionals : Ensuring the availability of well-trained and skilled ADR professionals is crucial for the success of ADR mechanisms in India.

Enforcement of Awards : While arbitral awards are generally enforceable in India, challenges related to enforcement can still arise, impacting the effectiveness of ADR processes.

Overall, ADR has been increasingly successful in India and continues to play a significant role in the country's dispute resolution landscape. As awareness grows and the legal framework evolves to support ADR mechanisms, their success is expected to further increase in the future.

Corruption is also a concern in various sectors and systems in many countries, including the legal system and alternative dispute resolution (ADR) mechanisms. While ADR is generally considered to be more efficient and less prone to corruption compared to traditional court systems, there have been instances of corruption and unethical practices in ADR mechanisms in India, as in any other country. There may be instances where arbitrators or mediators are influenced or biased in favour of one party due to personal relationships, financial interests, or other reasons. Parties involved in ADR proceedings may attempt to influence the outcome of the dispute by offering bribes or other forms of illegal inducements to arbitrators or mediators. Arbitrators or mediators may have conflicts of interest that could compromise their neutrality and impartiality in resolving disputes. Lack of transparency in the selection of arbitrators or mediators, as well as in the conduct of ADR proceedings, can create opportunities for corruption and unethical practices.

To address these concerns and ensure the integrity of ADR mechanisms, it is essential to implement safeguards and best practices, such as establishing and adhering to a code of ethics for arbitrators and mediators, outlining standards of conduct and ethical behaviour.It should be ensured that arbitrators and mediators are well-trained, qualified, and adhere to professional standards of conduct. We should promote transparency in the selection of arbitrators or mediators, as well as in the conduct of ADR proceedings, to enhance accountability and reduce opportunities for corruption. We should implement mechanisms for oversight, accountability, and complaints redressal to address allegations of corruption or unethical behaviour in ADR proceedings.

While efforts are being made to improve the integrity of ADR mechanisms in India, addressing corruption requires a multi-faceted approach involving legal reforms, institutional strengthening, awareness-building, and a commitment to upholding ethical standards in the practice of ADR.

While ADR is generally faster than court litigation, the speed of resolution can also depend on various factors such as the complexity of the dispute, the willingness of parties to cooperate, the availability of ADR professionals, and the specific ADR process chosen.

Almost all disputes – commercial, both direct and indirect taxes, civil, labour and family disputes in respect of which the parties are entitled to conclude a settlement, can be settled by Consensual Dispute Resolution procedures.

ADR and CDR techniques have been proven to work in the business environment, especially in respect of disputes involving joint ventures, construction projects, partnership difference, intellectual property rights, personal injury, product liability, professional liability, real estate, securities, contract interpretation and performance and insurance coverage.

While concluding, I would like to quote what former Chief Justice Berger of United states of America told the American Bar Association.

“The harsh truth is that we may be on our way to a society over run by hordes of lawyer, unruly as locusts, and brigades of judges in numbers never before contemplated. The notion that

ordinary people want black robed judges, well dressed lawyers and fine panelled court rooms as the setting to resolve their disputes is not correct. People with legal problems, like people with pain, want relief and they want it as quickly and inexpensively as possible."

All said and done it is the duty of the lawyers to create an awareness about ADR systems amongst their clients. I conclude by just saying that it is high time we as law professionals took notice of these facts and join hands with the judiciary in working for a solution.

Unless this is done, the citizenry would ultimately hold us responsible for the final collapse of the third arm of the State i.e. The Judiciary.

Former Chief Justice of India, Justice A.M. Ahmadi wrote :

"While we encourage ADR mechanisms we must also create a culture for settlement of disputes through those mechanisms. Unless the members of the Bar encourage their clients to settle their disputes through negotiations such mechanisms cannot succeed."

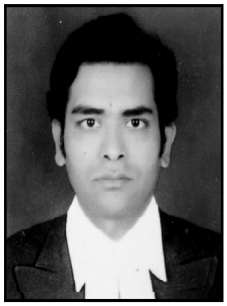
Overall, if parties are looking for a faster and more efficient way to resolve their disputes, ADR can often be a favorable option compared to traditional court litigation. It is important for parties to assess their specific needs and circumstances to determine whether ADR is the most suitable approach for their particular case.

At the end of the day the question is Is ADR the final solution?

The search for the ultimate solution for speedy justice goes on.

* *Arise, awake, and stop not till the goal is reached.*
* *"We are what our thoughts have made us; sotake care about what you think. Words are secondary. Thoughtlive; they travel far."*

"THE ANCIENT TAXATION ERA TO DIGITAL TAXATION SYSTEM OF BHARAT"



ABINAYA SAHU, ADVOCATE

As we know the earliest sources of information about ancient India are the Vedas, a collection of sacred scriptures. They were written and disseminated in the period from the 2nd millennium to the 5th century BCE. This period in India's history is called the Vedic Age. Adherence to the Vedas influenced all aspects of the life of India's population, including a culture of fulfilling tax obligations. Voluntary offerings to the rulers of the kingdoms , as well as sacrifices to the gods, were called "bali" (Religious Tax). It was believed that thus the ruler would protect the country from enemies, and the gods would shield the people from drought and other disasters. But on the other hand in this digital era India is truly a digital native country, not just the young that are born to technology, but even the older population take to technology and Sometimes we use the way to denote the digitization of tax administrations as they invest heavily in technology. These investments are vastly improving their ability to gather more tax information and gain more insights into the tax, financial, positions of taxpayers and the digital process of tax collection

The ancient tax era

Whereas ancient Indian literature mentions various taxes: "bali", "kara ", "bhaga". At different times and in different sources, these words had different meanings. For example, bali could mean a religious tax, a land tax, an emergency tax, or simply tax in general. Kara was used as a common name for all taxes, as a monetary tax, as a monetary land tax, or as monthly taxes from farmers. Bhaga usually described the part of the spoils of war due to the king, or the king's share. It may also have been a synonym for bali.

A formal tax system was in existence in India since the time of Maurya dynasty. The higher class of citizens contributed 1/6th of their income as tax. It is said that even before the Mauryas, tax was mentioned in Manu Smruti, one of the most ancient scriptures of India.The amount of the tax had to be based on the yield and could not be levied in the event of a poor harvest. There was a prohibition on taxes in areas of "construction of fortifications, irrigation facilities, trade routes, colonization of waste lands, and formation of forest-preserves for timber and elephants, which benefit the state." The king was obliged to provide grain, cattle, and money to relocated persons and buy 1/4 of their harvest with money.

The severity of the tax burden depended on the regime. Under reasonable rulers, citizens felt tax pressure but had enough money to live. When a greedy ruler came to power, residents sometimes had to abandon their homes and move to another area to hide from tax collectors. Some protests against excessive taxes resulted in uprisings. Courtiers even played the cunning trick of sending a disagreeable official to collect taxes in some disadvantaged area where a mob might tear him to pieces.the Brahmin and advisor to the dynasty's founder, who helped

Chandragupta unite the country, compiled the treatise "Arthashastra", which is dedicated to government. The treatise is written as instructions to the ruler and provides solutions to many issues, including economic policy and taxation.

According to an alternative narrative, taxes in ancient India were paid to the king as the supreme owner of the land. As the head of legislative and executive power, the king was obliged not only to protect his subjects, but also to develop the economy: to direct the construction and maintenance of irrigation systems, lay roads, exploit mineral deposits, and create settlements and the primary goal of the government's economic policy was to replenish the treasury with income, taxes, and other payments from the population.

Taxation of Varnas

As we know an ancient Indian society was divided into four main classes-varnas-that formed under the influence of Hinduism and the myth about the origin of peoples. It is believed that all people descended from different parts of the body of a giant who once lived: Brahmins from the mouth and ears, Kshatriyas from the shoulders and arms, Vaishyas from the hips and legs, and Shudras from the feet. Persons stripped of social status as well as untouchables existed outside the varnas. if we tablaize the Varnas then we may say in that period the Varnas 1. Brahmins stands for Priests, scholars, ascetics 2. Kshatriyas stands for Warriors, rulers 3. Vaishyas stands for Farmers, cattle breeders, artisans, merchants 4. Shudras stands for Servants, workers.

According to the Arthashastra, only Vaishyas had to pay taxes. The supreme purpose of their existence was to support living conditions for themselves and the rest of the varnas. They had to support Shudras, pay taxes to Kshatriyas, and present gifts and alms to Brahmins. Their obligations included performing sacrifices and studying, but their primary tasks were farming, cattle breeding, and trade. Vaishyas could also engage in usury. For them, religion dictated the need to pay taxes, which and was considered the norm.Vaishya farmers contributed part of their harvest as a tax, and artisans had to do public work 1-2 days a month for free or pay a monetary tax. The social status of Vaishyas did not change even when they became rich merchants. Kshatriyas protected people, learned to perform sacrifices, and collected taxes, but did not pay them.Brahmins had to study and teach others, conduct sacrificial rites, and accept and give gifts. They could not be punished and executed, and were exempt from all taxes and civil conscription. Their duty was to teach the lower classes about religious rites and to perform them. They were not supposed to have property and lived off of gifts and alms collected by their followers. Any surplus had to be distributed as alms. The whole society, including the king, were obliged to support the Brahmins. We may say the post-Vedic period saw the appearance of one of the most interesting documents in terms of taxation. It is called the "Manava Dharma-Sastra" or Laws of Manu (also known as "Manu-smriti" and "Manava-dharma-shastra"). After this ara of taxation in the subsequent mughal invaders brought with them their own taxation system. The infamous JEZIA was a tax imposed on the non -Islamic people of the land in India, as we know it was abolished by Akbar.

British era

As we know To fill the treasury, the first Income-tax Act was introduced in February 1860 by Sir James Wilson (British India's first finance minister). The act received the assent of the Viceroy on 24 July 1860, and came into effect immediately.. It was introduced to compensate for the losses sustained by the government due to the rebellion of 1857. Income tax is defined as the annual charge levied on both earned income (wages, salaries or commission) and unearned income like dividends, interest or rent. In addition to financing a government's operations, progressive income taxation is designed to distribute wealth creation more evenly in a population and to serve as buffer in case of fluctuations in the economic cycle. There are two basic types of income tax: personal income tax and corporation income tax.

The Income Tax Act was passed in India in 1886, and there have been constant revisions and refinements in the Act since then. After the first World War, a new Income Tax Act was passed, in 1918, again to counter the residual effects of economic devastation caused by the war. This income tax Act was in place till 1922, when it was replaced by another Act.

Independent era

After 15 years India gained freedom from the British, the income tax Act was modified again. The current Income Tax Act has been adopted in 1961, and bought into force with effect from April 1, 1962. It encompasses the whole of India, including Sikkim, Jammu and Kashmir. The Central Board of Revenue bifurcated and created a separate Board for Direct Taxes called as the Central Board of Direct Taxes under the aegis of Central Board of Revenue Act, 1963.

Currently, there are five broad heads under which income is taxed by the govt. of India:

" Income from salary

" Income from business or profession

" Income from capital gains

" Income from property

" Income from other sources

Each successive government amends the Act with an aim to finance government operations, and to try and distribute wealth more evenly. A noticeable feature of the Income Tax Act of India is that agricultural income in India is not taxable. Income tax in India (and all other countries) is assessed annually for the previous financial year.

The Tax Administration Reform Commission Or TARC was established by the Government of India in 2013 via a notification in August that year as the tax structure consists of the central government, state governments, and local municipal bodies. When it comes to taxes, there are two types of taxes in India - Direct and Indirect tax. The direct tax includes income tax, gift tax,capital

gain tax indirect tax includes value-added tax, service tax, goods and services tax, etc. As the TARC has recognized that there exist taxpayer services which are delivered by providing information (passive service) and through interactive services (active service). Channels for providing information are: i. Websites ii. Call Centers iii. Publications iv. Public circulars issued by the departments v. Advertisements vi. Interactive Voice Response System (IVRS) vii. Outreach programmes.

It is said that that the Indian tax system is one of the most complex in the world. India currently has a three tier setup for taxation. The central government and the state government can both impose tax. The State government in turn can delegate taxation to the local governing bodies like the municipal corporations and grampanchayats., including the likes of income tax, wealth tax, property tax, gift tax, sales tax, VAT, custom duty, excise duty (now replaced by GST), corporate tax, income tax and a plethora or other taxes? Indeed, it is one of the reasons why there is a high demand in India for income tax consultants, GST consultants, auditors, and other professionals.

As a nation evolves, its needs change. Bharat is no exception. No doubt as the nation progresses, the tax structure of India will undergo many refinements. For example, the Goods and Services Tax (GST), which has replaced the Central and State indirect taxes such as VAT, excise duty and service tax, was implemented in Bharat on July 1, 2017. GST has been already introduced in more than 160 countries, starting from France where it was introduced way back in 1954. So, it can be safely said that GST is a tired and tested taxation.till now the taxation system amendment continued as need of the nation time to time.

Digital taxation era

As we know our India that is "Bharat" introduced a digital tax in the form of an 'Equalisation Levy' ('EL') in 2016. Initially, the EL was levied on online advertisements and other related payments for provision of digital advertising space at the rate of 6% to non-residents not having a permanent establishment ('PE') in India.Effective from 01 April 2020, the Indian Government has expanded the scope of the EL to cover all non-residents who own/operate/manage an e-commerce facility or platform for online sale of goods or services or both or facilitation of such sale.

This levy won't be applicable in the following cases:-

a. If the non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;

b. If the aggregate amount of consideration for specified service received or receivable in a previous year does not exceed INR One (1) Lakh;

c. If the payment for the specified service by the resident person/ permanent establishment in India is not for the purposes of carrying out business or profession;

d. If the organization making the payment is registered in Jammu and Kashmir.

Expansion in the scope to include 'E-commerce Operators'

As we know recently, the Government of India widened the ambit of the levy by including e-commerce operators. The applicable tax rate here is two (2) per cent on amount of consideration received/receivable by a non-resident e-commerce operator. This has come into effect from 1st April 2020 but yet to be fully implemented. The e-commerce operator for the purpose of the present taxation means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.

From the Compliance Angle for E-commerce business in India

The legal compliance requirements include Mandatory registration; and Monthly and Annual compliances for the companies that fit under the scope of this levy.Now the trend of E-commerce has been rapidly increasing since the last decade. Many players with new business ideas have entered the market, be it Zomato/Swiggy delivering food from various restaurants or Flipkart/ Amazon delivering products or Grofers delivering groceries.

CONCLUSION

As the word "Arthashastra" can be translated into English as "The Art of Well-Being" on the basis of Arthashastra how in ancient period the tax collectors collect the tax for their king and those tax is used less or more for the wellbeing of the people as well as the state infrastructure b in this digistal tax system also the motive is same for the Govt. but the ability of tax preparation execution, imposition and collection is rapid regarding Digital taxation era. The rapid growth in th E-commerce industry is proof that E-commerce has become a vital and integral part of our lives. Long gone are the days where people used to hesitate from shopping online as they had doubts about the quality, their money being stolen, non-delivery of the product. It is observed that today huge part of the population trusts E-commerce websites for their day-to-day needs. Therefore, now a days most of the purchases are prepaid compared to Cash on Delivery Our legal system is constantly introducing new rules and regulations to deal with this significant shift in the business model in order to safeguard the interest of the consumers.

At last we may say according to the Chanakya quotes "King must collect tax like honey bee enough to sustain but not too much to destroy". This represents modern principals of taxation, namely as (i) A tax should be levied once a year, and should not prove burdensome and (ii) Taxes should be levied according to the ability to pay.

* *Ability is what you're capable of doing. Motivation determines what you do.*