ISSN: 2456-5008

INDIAN JOURNAL OF CONSTITUTIONAL STUDIES

ARTICLE

AUGUST 2021

ISSN 2456 - 5008
Published bimonthly

- - Disclaimer - -

- - Note - -

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Publisher Details -
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 ISSN: 2456-5008

- Acknowledgement-

We would like to express a deep sense of gratitude towards our editors who thoroughly validated all articles sent to her for reviews. We would also like to thank our contributor, **Ms. Chidige Sai Varnitha** for her contribution towards journal's blog and for conducing editions as and when required.

THE TAXATION LAWS (AMENDMENT) BILL, 2021- HOW IT WILL AFFECT OLDER TAXATION LAWS IN INDIA?

-Chidige Sai Varnitha, student, Damodaram Sanjivayya National Law University.

Introduction:

On August 5, 2021, Finance Minister Nirmala Sitharaman introduced the "Taxation Laws (Amendment) Bill, 2021" (TLA Bill, 2021) in the Lok Sabha. This brought an end to the government's attempt to tax indirect transfers by introducing the law on retrospective tax.[1] The controversial retrospective tax was eliminated by this bill, which amended the Income Tax Act of 1961 and the Finance Act of 2012. This controversy on retrospective law is a continuing disagreement from the time this retrospective tax law was introduced in 2012 which spooked investors for long years.[2] So, the important aim of this amendment bill is to withdraw the imposition of tax made in 2012 by the retrospective legislation.

What is Retrospective Tax?

In usual terms, 'retrospective' means 'looking backward'. It relates to 'looking back over the past'. With respect to taxation, retrospective taxation refers to the application of an amendment in the present legislation before the date on which the changes were introduced. In simple terms, it levies a tax on a transaction that occurred before the law was enacted.[3]

This legislation on retrospective tax permits the country to impose tax on specific products, items, or services, as well as deals, and tax companies from a date prior to the enactment of such legislation. Countries adopt this approach to address any prior inconsistencies in their

[1] Amit Singhania and Nimish Malpani, *Retrospective tax amendments made prospective in retrospect,* NEWS18 (Aug. 07, 2021), https://www.news18.com/news/business/retrospective-tax-amendments-made-prospective-in-retrospect-4057139.html
[2] Outlook Business, *Retrospective Tax Law: All you need to know,* OUTLOOK INDIA (Aug. 06, 2021), https://www.outlookindia.com/website/story/business-news-retrospective-tax-law-all-you-need-to-know/390695
[3] *What is Retrospective* Tax, BUSINESS STANDARD, https://www.business-standard.com/about/what-is-retrospective-tax#collapse

taxation policies. Although governments frequently apply retrospective amendments to tax laws to "clarify" existing laws, it ultimately affects companies.[4]

So, this law on retrospective tax is the one, which was withdrawn by the Government by passing this amendment bill.

Background- *Vodafone International Holdings BV vs. Union of India & Anr*[5] (Retrospective Taxation Case):

The retrospective taxation law was introduced in 2012 by the late Pranab Mukherjee.

This term "retrospective taxation," provoked several of the disagreements between the Government of India & global companies like Vodafone. The Income Tax Act of 1961 was amended to include a retrospective tax provision. This gives the government the authority to demand that companies pay taxes on mergers and acquisitions that occurred prior to that date of such legislation[6]. This may be traced back to May 2007, when Vodafone paid $11 billion for a 67 percent share in Hutchison Whampoa. The Indian government issued a claim for 7,990 crore rupees in capital gains & withholding tax from Vodafone in September of that year, alleging that the company ought to have deducted the tax at source prior to making the payment for Hutchison. Before the High Court of Bombay, Vodafone contested the demand notice, but the court decided in favour of the Income Tax Department. Following that, Vodafone appealed the High Court decision to the Supreme Court, which decided in its favour in 2012, stating that Vodafone Group was not required to pay any taxes as a result of the stake purchase.

In the year 2012 only, the late Pranab Mukherjee bypassed the Supreme Court's decision by introducing an amendment to the Income Tax Act by the Finance Act 2012, which gave the Income Tax Department the authority to tax such transactions retrospectively. Vodafone is now responsible for paying the taxes. By that time, the case had earned the label as the "retrospective taxation case."[7] By this retrospective tax law, the centre got power to impose taxes on transactions which took place even before the adoption of this provision i.e even before May 28, 2012 (date on which retrospective tax law was passed).

[4] Aashish Aryan, *Retrospective taxation: the Vodafone case, and the Hague court ruling*, INDIAN EXPRESS (Sep. 27, 2020), https://indianexpress.com/article/explained/retrospective-taxation-the-vodafone-case-and-the-hague-court-ruling-6613799/

[5] (2012) 6 SCC 613

[6] Supra note 3

[7] Supra note 4

Taxation Laws (Amendment) Bill, 2021:

This bill put forward to alter the Income-tax Act of 1961 so that no tax claim will be issued hereafter for indirect transfer of Indian assets made before May 28, 2012 (i.e., the date on which the Finance Bill, 2012 obtained the assent of the President), based on the retrospective amendment law.

It indicated that the taxation on indirect transfers of Indian assets executed before May 28, 2012, be eliminated if certain conditions are met.[8]

Effect of the Taxation Laws (Amendment) Bill, 2021 on Older Taxation Laws in India:
This TLA Bill, 2021 has effect on certain provisions of two statutes. They are: i) Income Tax Act, 1961 ii) Finance Act, 2012.

1. **Effect of the Taxation Laws (Amendment) Bill, 2021 on the Income Tax Act, 1961-**

Clause 2 of the TLA bill, 2021 proposes to amend section 9 of the Income Tax Act of 1961.[9] This bill introduced three provisos (4th, 5th and 6th proviso) in explanation 5 to Section 9(1)(i) of the Income Tax Act, 1961. These three provisos are introduced to provide relief to certain eligible companies impacted by the aforementioned retrospective amendment. This amendment bill provides that the provisions relating to the indirect assets transfer in India do not apply to assets transferred prior to May 28, 2012. It is further stated that the demand raised in concluded assessments or rectification orders for indirect transfer of Indian assets executed prior to 28-05-2012 shall be nullified on fulfilling certain conditions.[10]

- **Changes made to the previous taxation Laws with the introduction of fourth proviso and fifth proviso by the Taxation Laws (Amendment) Bill, 2021-**

This fourth proviso provides that “the retrospective impact of Explanation 5 to Section 9(1)(i) shall be ignored if assets situated in India are indirectly transferred before 28-05-2012. Thus, the income accruing or arising through or from such indirect transfer of Indian assets or capital assets shall not be taxable in India. Therefore, all assessments or rectification applications ‘pending’ before the authorities, to the extent it relates to the computation of income from

[8] The Taxation Laws (Amendment) Bill, 2021, Bill No. 120 of 2021, § (August 4, 2021)
[9] Supra note 9, §2
[10] Supra note 13

indirect transfer of assets, shall be deemed to be concluded without any additions."[11] On the other hand, fifth Proviso talks about rectification applications that are 'concluded' by the authorities. This fifth proviso states that "all assessments or rectification applications 'concluded' by the authorities, to the extent it relates to the computation of income from indirect transfer of assets, shall be deemed to never have been passed or made."[12]

So, introduction of fourth and fifth provisos lead to change in the previous taxation laws where retrospective taxation is ignored in case the assets located in India transferred indirectly before 28 May, 2012 and the assessments/ applications pending before the authorities are deemed to be concluded with no additions. Further fifth proviso adds to this that the assessments/ applications concluded by the authorities are deemed to have been never made/ passed.

- **Changes made to the taxation laws with the introduction of sixth proviso by the Taxation Laws (Amendment) Bill, 2021-**

The Sixth Proviso provides that "where any amount becomes refundable to such person, then such amount shall be refunded to him, but no interest under section 244A shall be paid on that amount. The relief in cases of concluded assessments shall be given to only those assesses who satisfy the prescribed conditions."[13]

So, this introduction of sixth proviso changed the previous taxation laws by refunding to such persons who are eligible on satisfying the specified conditions.

2. Effect of the Taxation Laws (Amendment) Bill, 2021 on the Finance Act, 2012-

By passing the TLA bill, 2021, there is effect on section 119 of the Finance Act.
Before looking into the effect of the TLA bill, 2021 on the Finance Act, 2012, let us have a look at the position of Section 119 of the Finance Act before passing of the TLA bill, 2021:
Clause 3 of the TLA bill, 2021 proposes to amend section 119 of the Finance Act, 2012.[14]
Now, the present bill made certain changes to this previous taxation law by proposing an amendment to Section 119 of the Finance Act where proviso was inserted to Section 119. It states that "this section shall cease to apply to the person who fulfills certain conditions, such

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[11] Supra note 9, §2
[12] Ibid
[13] Supra note 9, §2
[14] Supra note 9, §3

as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking to the effect that no claim for cost, damages, interest, etc."[15]

The TLA bill seeks to insert two provisos- first & second to section 119. "The first proviso empowers the Board to make rules to provide for (i) the form and manner in which an undertaking shall be submitted; and (ii) any other condition to be fulfilled."

Conclusion:

In 2012, with the introduction of amendment on retrospective taxation, there arose many criticisms from shareholders. They stated that this retrospective amendment is against the notion of certainty of tax which harms India's position as a desirable investment location.

It became impossible for the Income Tax Department to collect taxes even after introducing the retrospective amendment. Income Tax Department demanded taxes in 17 cases. Four of the 17 cases sought arbitration under the Bilateral Investment Protection Treaty with the United Kingdom and the Netherlands. In other two cases, the Arbitration Tribunal decided in favor of the taxpayer.

This amendment on retrospective taxation in 2012 and the demand of taxes by the Income Tax Department resulted as a negative one which resulted in the lack of prospective investors.

As a result, the government proposed the TLA bill, 2021 which advocates to repeal the amendments introduced in Section 9 in 2012. At present, India is at a juncture where rapid economic recovery from the COVID-19 pandemic is critical, and foreign investment plays a key role in supporting rapid economic growth and employment. So, this TLA bill, 2021 was introduced by the Parliament.

[15] Ibid