



“ PROCEDURE , LAW ON RECOVERY MECHANISM OF TAX ARREARS AND PUBLIC MONEY UNDER STATUTORY LAWS AND ITS IMPLICATIONS

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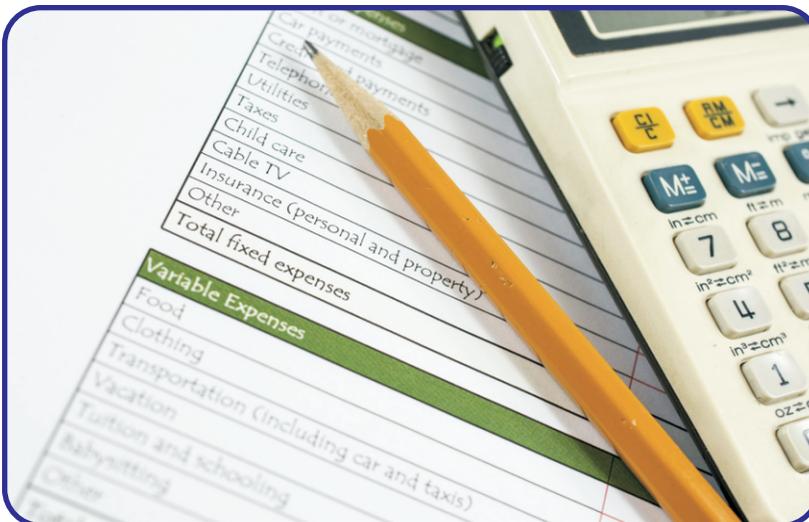
ABSTRACT

"While punishment, when ill-awarded under the influence of greed and anger or owing to ignorance, excites fury even among hermits and ascetics dwelling in forests, not to speak of householders"

Let us hope that the law enforcing agencies/tax authorities will get at

least some inspirations from the above of Arthashastra.

This research paper focuses on the recovery mechanism adopted by law enforcement agencies /tax authorities for the recovery of tax arrears wherein high handed , arbitrary methods are used to recover taxes from the tax paying community.



KEYWORDS : Recovery Mechanism , Tax Arrears , tax paying community.

INTRODUCTION :

This research will go a long way to bring out a model Legislation to protect the 'subjects in the Kingdom of taxpaying community' and to foster good relationship with the tax collectors.

Days gone by reminds us of innumerable high handed and oppressive attempts of intimidation

by way arrest, seizure, raids , forced spot recovery etc which are being initiated either for vengeance or bribery by corrupt and greedy officers. Cases are no little wherein corporate honchos were arrested by "objective considerations and on the whims, caprices and fancies of the officers". At the same time. sincere and risky attempts made by honest officers throughout the country by which miscreants are caught and put before the Court of law are not disregarded or undermined.

There are plethora of such cases wherein the negligent acts of law enforcement agencies by imposing of fake liabilities and then persecuting the tax payers by use of oppressive and harsh recovery methods of arrest , detention , attachment of movable and immovable properties, attachments of

bank accounts, search , seizure and raids being carried out on the demands raised which are itself debatable , incorrect and results of the high pitched assessments. As also we observed that the Tax departments issue internal circulars directing the tax officers to achieve targets in March in lieu of promotions and fancy postings as a result mercilessly wrongful huge liabilities are imposed on the tax payers , forgetting that if the citizens yields revenue then only the growth of entire nation shall foster.

Ironically, incidents of allegation of suppression and willful misrepresentation on account of interpretational differences of law which lead eventually to arrest and agonizing experiences in the corporate world are demoralizing and will only tend to create fear, suspicion and vengeance.

"KINGDOMS, Oh Lord, are like flowers and fruit trees; just as flourishing plants and fruit trees being properly nourished yield flowers and fruits at the proper season, so the kingdom being protected yield taxes and revenues"

The above is a quote from 'Divyavadana' or 'Divine Stories' which is an anthology of Buddhist tales, in which ministers advised the King on the need to protect the kingdom for better yield of taxes and revenues.

Taxation laws in India are cumbersome and the law making authorities, tax collectors and the payees are put to greater confusion due to lack of clarity, contradictory judgments of various CESTAT's, High Courts and even of the Apex Court. It is quite natural that an assessee may prefer to take advantage of a favourable order of Appellate Authorities or based on his good faith and own interpretation and analysis. It is gross denial of justice to brand all such things as attempts of tax evasion so as to attract the provisions and consequences of cognizable offence.

Even though the normal adjudication proceedings can go on, it is highly unjustifiable to invoke the provisions of arrest and deny the bail in the matters of interpretations and justifying the arrest on the basis and assumptions of amounts of tax being substantial. Irrespective of the amount involved, the Authorities need to decide objectively before invoking the provisions of arrest. The Hon Supreme Court has rightly held that the primary function of the Tax Authorities is to recover duties and not punish the subjects with arrest.

In view of the Supreme Court decision in the case of Om Prakash stated above the Tax Authorities should review all the earlier cases for last 10 years and drop the criminal proceedings where arrests were made on interpretation issues except the true sense of smuggling (not the definition of smuggling given in the Customs Act), drug trafficking, money laundering, cases involving national security etc.

Corruption is rampant in our society. The powerful weapon for this takes the form of threatening in the name of arrest, seizure, raids and spot recovery. Myriads of cases are there where the innocent tax payers are harassed in the name of arrests and cases are no little where they are put in jail. Even the bail conditions are made so harsh so as to infringe personal liberty.

High pitched assessment with additions having not much merit, yet forceful recovery of highly and seriously disputed dues even during pendency of first appeal has been experienced from time to time. Cases have come to notice when requests raised are as opposed to tying judgments of High Court, yet financial balances were connected.

At times , financial balances of manufacturing plants of assessee were connected even before the date settled for hearing by the AO on stay request despite the fact that the assessee had outfitted bid notice and nitty gritty stay appeal to the AO calling attention to that all requests were because of increases made as opposed to tying judgments. This is on the grounds that all can't approach High court by method for Writ Petitions.

The ability to hassle by raising sharp requests and intense recuperation is one of the primary

reason of debasement in duty offices.

The Government knows well that significant piece of requests are abandoned in first claim itself, why move is not made against failing officers who make increments and dis-remittances just to make shrill appraisal and to raise requests forcing false liabilities on real citizens. As the tradition that must be adhered to should be trailed by each national reliably, no assessee ought to have any resentment at all to pay the expense contribution for augmentations made to the salary for legitimate , accurate and lawful reasons. Rather the assessee should feel duty bound to pay his legitimate dues.

Maybe the assessee ought to feel compelled by a solemn obligation to pay his honest to goodness duty. However the oppressive disposition of the Assessing Officers is understood. Most shrill appraisals are made knowing completely well that the increases made are not on a sound balance and should not be managed on bids. Yet requests are squeezed and the assessee is made either to pay or confront coercive measures.

In many cases the surveying officers himself unmistakably know the destiny of the augmentations made by the office yet coercive gathering of the duty due is made to the badgering of the assessee.

hatchet authorities should have the capacity to welcome that they are a semi legal power and need to remedy the AOs inordinate additional energy to recoup charges by a wide range of means is to be stopped by " quit it" request on AOs, and all semi legal bodies from managerial offices perforce comply with the re-appraising power orders and when HC passes its requests fastidiously, else assessee can likewise move the scorn of court appeal against income.

Also it is should have been be noticed that the Government in a welfare state should be individuals driven else things superfluously snow ball by capable yet poor assessee if not secured by exceptionally income, an arm of Government the service concerned need to caution charge recuperation powers to go genuinely after all , everything appraisals need not as a matter of course right as assumptions from income do the unnecessary harm.

Assessment officers additionally be cautioned that their secret reports are to be perfect of negative appraisals.

“ A king , a prostitute , Lord Yamaraja , fire , a thief a young boy , and a beggar cannot understand the suffering of others. The eighth of this category is the tax collector “

Ancient law of recovery of tax and dues, designed in monarchical system does not resonate with today’s democracy . The procedure adopted for recovery of taxes and dues is very harsh , oppressive and coercive .

It would not be out of place to mention that it is the foremost and prime duty of the citizens of the Country to pay taxes on time and there is no iota of doubt that for the willful defaulters such proceedings should be carried on by the Revenue authorities but we cannot ignore the fact that there are many lapses on the part of departments and also there are many tax payers who genuinely face crisis.

The socio economic effect of such harsh provisions and a model Legislation shall be proposed.

There are many small scale and big industries which are left with no option but to close down . Also various tax payers who were not at any fault and orders imposing false liabilities had been raised and thereafter the mistakes were rectified by the same department but we cannot forget the agony and persecution created on such tax payers. Infact one such case the Researcher has also mentioned in this article.

If the remember the olden times, Lagaan was recovered from the farmers. Unfortunately even today such system exist and Lagaan is still being recovered. That clearly shows that our taxation laws on

recovery mechanism needs serious review

The taxation laws that exist today are in same resonance still with those that existed during monarchy times, attaching of the properties , selling the properties, initiating criminal proceedings against the tax payers .

The Preamble of our Constitution itself starts with “ We THE PEOPLE OF INDIA.....”

The laws of tax recovery need a change and should be in resonance with the Democratic structure of our Country. Ours is a Government of the PEOPLE , FOR THE PEOPLE AND BY THE PEOPLE.

An 1869 decision which confirmed that tax in the UK has to be charged in accordance with “law”[1] as a result of it being said in the House of Lords that:

If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

The power vested with the tax officers should not be exercised arbitrarily or capriciously or based on matters extraneous or irrelevant. The Income-tax Officer should apply his mind to the facts and circumstances of the case relevant to the exercise of the discretion, in all its aspects. He has also to remember that he is not the final arbiter of the disputes involved but only the first amongst the statutory authorities. Questions of fact and of law are open for decision before the two appellate authorities, both of whom possess plenary powers. In exercising his power, the Income-tax Officer should not act as a mere tax-gatherer but as a quasi-judicial authority vested with the power of mitigating hardship to the assessee. The Income-tax Officer should divorce himself from his position as the authority who made the assessment and consider the matter in all its facets, from the point of view of the assessee without at the same time sacrificing the interests of the Revenue.

In the present research it is studied in depth and detail, the methods of recovery adopted by the law enforcement agencies which are harsh, coercive and the unbridled powers vested with the tax collectors.

The laws that prevail for recovery of tax arrears are in resonance with those that existed in Jagirdari system / feudal system , which existed during the reign of monarchy in the country and need severe changes to meet with democratic structure of the economy.

The negligent acts of law enforcement agencies by imposing of fake liabilities and then persecuting the tax payers by use of oppressive and harsh recovery methods of arrest , detention , attachment of movable and immovable properties, attachments of bank accounts, search , seizure and raids being carried out on the demands raised which are itself debatable , incorrect and results of the high pitched assessments. Thus the mechanism and the procedure laid down under the statute for recovery of taxes and dues needs a serious review and amendment. For tax payers who genuinely have faced crises and where there is no intentional/wilful defaults , there are no compromise schemes , settlement schemes and amnesty schemes are laid down under the statute as a result of which irreparable damage is being caused to the Economy.

It would be trite to refer to a recent decision of the Income Tax Appellate Tribunal (Delhi) in the case of Bharti Airtel Ltd. Vs. ACIT in I.T.A. No.: 5816/Del/2012 decided on March 11, 2014, where the ITAT hauled up the Assessing Officer (AO) and Dispute Resolution Panel (DRP) for ‘Blatantly frivolous & unsustainable’ additions and suggested accountability mechanism to put check on the Assessing Officers and also questioned the existence of ‘ineffective Dispute Resolution Panel’. The facts of the case are that the AO made an arbitrary & illegal addition of Rs. 5,739 Crores to the income of the assessee, without any basis. The ITAT while allowing the Appeal passed strictures against the AO & the

DRP and held thus:

“... if an action of the AO is so blatantly unreasonable that such seasoned senior officers well versed with functioning of judicial forums, as the learned DRs are, cannot even go through the convincing motions of defending the same before us, such unreasonable conduct of the AO deserves to be scrutinized seriously. At a time when evolving societal pressures demand greater degree of accountability in the governance also, it does no good to the judicial institutions to watch such situations as helpless spectators. If it is indeed a case of frivolous addition, someone should be accountable for the resultant undue hardship to the taxpayer -rather than being allowed to walk away with a subtle, though easily discernable, admission to the effect that yes it was a frivolous addition, and, if it is not a frivolous addition, there has to be reasonable defence, before us, for such an addition.

... Whichever way one looks at these entries, the inescapable conclusion is that the addition made by the AO is wholly erroneous and devoid of any legally sustainable merits.

... The fact that even such purely factual issues are not adequately dealt with by the DRPs raises a big question mark on the efficacy of the very institution of Dispute Resolution Panel. One can perhaps understand, even if not condone, such frivolous additions being made by the AOs, who are relatively younger officers with limited exposure and experience, but the Dispute Resolution Panels, manned by very distinguished and senior Commissioners of eminence, will lose all their relevance, if, irrespective of their heavy work load and demanding schedules, these forums do not rise to the occasion and do not deal with the objections raised before them in a comprehensive and effective manner.

... While we delete the impugned addition of Rs 5739,60,05,089, we also place on record our dissatisfaction with the way and manner in which this issue has been handled at the assessment stage. Let us not forget that the majesty of law is as much damaged by not rendering justice to the conduct which cannot be faulted as much it is damaged by a wrongdoer going unpunished; not giving relief in deserving cases is as much of a disservice to the cause of justice and the cause of nation as much a disservice it is, to these causes, by granting undue reliefs. The time has come that a strong institutional check is put in place for dealing with such eventualities and de-incentivizing this kind of a conduct.”

Reforming Tax Administration – Some Recommendations

In order to promote and encourage good tax administration practices, from a long term perspective, the following measures are recommended:

- a) Establish accountability in tax administration whereby statutory provisions are enacted in tax laws specifically providing for actions against departmental officers passing inappropriate orders.
- b) Install quality reviews/audits of tax administration processes including adjudication process in particular.
- c) Expand the scope of Advance Ruling Mechanism to minimise litigation.
- d) Evolve new speedy dispute and effective redressal mechanisms.
- e) Award costs to the assesseees so as to cover litigation expenses.
- F) Increase the existing rate of interest on refunds of pre-deposit pending appeals as well as other refunds so as to be on par with prevailing commercial rate of interest.
- g) Introduce incentive schemes for team of departmental officers, in cases where, demands are sustained at higher judicial levels.

CONCLUSION

It is projected that by 2030, India is likely to become a World Economic Power. Hence, the entire world is looking at us. As per the taxation policy announced by the Government, it is expected that

substantive tax reforms are likely to be introduced in the near future. However, the Government needs to expressly recognise and take cognizance of the fact that, from a taxpayer perspective, the need of the hour is reforming tax administration. Employing unfair, unjust and coercive tax administration methods, would only encourage dishonest practices and non-compliances, rather than boosting tax revenues. Government needs to recognise that employing coercive tax administration methods is not the right policy to boost tax revenues. Instead, in order to boost tax revenues, priority focus of the government should be on evolving good tax administration practices.