

Relationship between The Constitution of India and The Income Tax Law

Dr. Babasaheb Ambedkar once quoted 'Constitution is not a mere lawyer's document, it is a vehicle of life, and its spirit is always the spirit of age.' Being qualified Chartered Accountants; we are well versed with the law of Income Tax, however, the very premise of this law (in fact any Indian Law) lies in the 'Constitution of India.' Thus, before interpreting or enforcing any statute one should always refer the Constitution to determine the validity of such law or provisions thereof. This write-up is an attempt to identify certain Articles of the Constitution which empowers the legislature to enact taxation laws, the legislative procedure for its enactment and how the provisions of the Income Tax Act, 1961 has link to the Fundamental Rights which have been bestowed upon us by the Constitution. Read on...



CA. Shashank Mehta

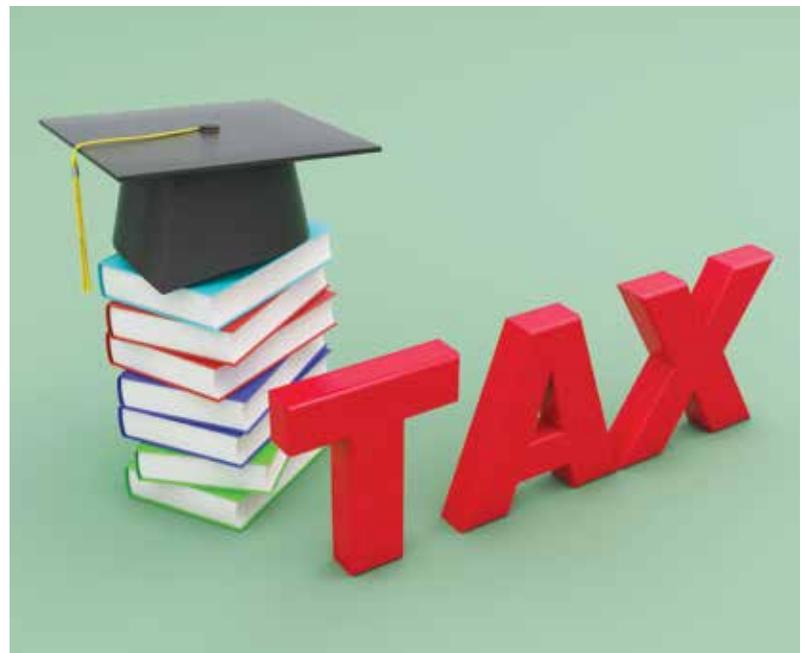
(The author is a member of the Institute. He can be reached at shashankmehta1695@gmail.com and eboard@icai.in)

A. Brief Introduction:

In India the constitution is regarded as the 'Mother Law' or the 'Law of the land' i.e. the supreme law. Hereunder, an effort is made to focus upon the basics of the 'Constitution of India' and its nexus to the 'Income-tax Act'. If we symbolize the constitutional aspect of the Income Tax Law as a fully grown tree, then we can classify these constitutional aspects as the following three major parts of a tree:

- (i) **The Crown (branches and leafs)** - Power to levy & collect Taxes
- (ii) **The Stem/Trunk** - Procedural aspects for enacting a statute
- (iii) **The Roots** - Preamble and Part III of the Constitution

Before proceeding with the above aspects, it is vital to have a glance on the history of taxation laws and the Constitution, albeit briefly.



B. Brief History of Taxation in India.

Taxation system in India persists since the ancient times. There are traces of well elaborated and planned taxing scriptures in *Kautilya's* (Chanakya) *Arthashastra* pertaining to 300 B.C. when the Mauryan Empire was at its glory. In the first chapter of *Arthashastra*, Chanakya quoted "*Kosha Moolo Danda*"; meaning - 'revenue is the backbone of administration', which is also a part of the official logo of the Income Tax Department of India. Also in 5th Century A.D., classical Sanskrit writer, *Kalidas* praising king Dalip stated that "*It was only for the good of his subjects that he collected taxes from them, just as the Sun draws moisture from the Earth to give it back a thousand fold*".



There are traces of well elaborated and planned taxing scriptures in *Kautilya's* (Chanakya) *Arthashastra* pertaining to 300 B.C. when the Mauryan Empire was at its glory. In the first chapter of *Arthashastra*, Chanakya quoted "*Kosha Moolo Danda*"; meaning - 'revenue is the backbone of administration', which is also a part of the official logo of the Income Tax Department of India.

Thus, taxation system in India is not a recent concept but has its roots stretched even in the Indian history. However, a codified taxing structure was introduced by Sir James Wilson in the year 1860 in India's First Union Budget. The Indian Income-tax Act of 1860 was enforced to meet the losses sustained by the British government on account of the military mutiny of 1857. Thereafter, new income tax statutes were passed in the year 1886, 1918 for a comparatively shorter period of time. Then, 'The Income Tax Act, 1922' was introduced, which is referred even today for various judicial pronouncements. Post-independence, in consultation with the Ministry of Law the 'Income-tax Act, 1961' was enacted which was brought into force from April 01, 1962.

C. Brief Introduction of 'The Constitution of India'

The Indian Constitution was adopted on November 26, 1949 [celebrated as '*Samvidhan Divas*']. As per Article 394, some of the Articles were given immediate effect. However, majority of the Articles became operative from January 26, 1950. The provisions relating to Citizenship, elections, provisional parliament, temporary and transitional provisions were given immediate effect i.e. November 16, 1949. The rest of the constitution came into force on 26th January, 1950 and this date is referred to in the Constitution as the date of its commencement, which

is celebrated in India as the 'Republic Day'.

The Indian Constitution is the longest written constitution of all the sovereign countries. The original Constitution was handwritten by *Prem Behari Narain Raizada* using beautiful calligraphy. As per Article 393, this Constitution is called the '*Constitution of India*' (hereafter referred to as 'the Constitution').

D. Broad areas of the Constitution covered in this article:

(i) The Crown (branches and leaves) - Power to levy & collect Taxes:

1.1 Article 265: Taxes not to be imposed save by authority of law.

As per Article 265 under Part XII of the Constitution, **no tax can be levied or collected except by the authority of law**, implying that, in India for levying any tax a dedicated legislation or a law is required to be enacted, in that respect. A tax without any legislation/law shall be regarded as unconstitutional.

Thus, in order to levy income tax, a dedicated law named the Income-tax Act, 1961 was enacted by the parliament which came into force w.e.f. 01/04/1962.

However, when one refers to Section 4 of the Income-tax Act, 1961, it provides that income tax can be charged in respect of the total income, *when any Central Act enacts that income-tax shall be charged for an assessment year at any*

rate or rates. Thus, Income-tax Act, 1961 in itself does not provide for the rate of taxation, instead it provides that only if any Central Act enacts that income tax shall be charged at the specified rates; only then income tax at such specified rates shall be charged on the total income of a person for an assessment year.

It is for this reason, every year, generally in the month of February 'Union budget' is presented wherein one of the agendas is the introduction of the 'Finance Bill,' which is subsequently enacted in accordance with the provisions of the constitution and is referred as the 'Finance Act'.

Generally, Section 2 under Chapter II of the relevant Finance Act provides for charge of income tax at the specified rate for a particular Assessment Year. Following is the extract of the Finance Act, 2020 for easy understanding:

"2. (1) Subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on the 1st day of April, 2020, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax shall be increased by a surcharge, for the purposes of the Union, calculated in each case in the manner provided therein."

From the conjoint reading of the above provisions, one can conclude that under Part I of the First Schedule of the Finance Act, the rates of tax are specified. Section 2 of the Finance Act spells the charge

of such rate as income tax for a particular assessment year. Once the Finance Act is enacted, section 4 of the Income-tax Act, 1961 provides for the Charge of Tax on a person's total income for a particular assessment year.

Q1. What if the Finance Act is not enacted for a particular year? Whether there would be no Income Tax payable for that year?

As per Section 294 of the Income-tax Act, 1961, in case where as on the 1st day of April if provision are not yet been enacted by a Central Act (Finance Act) for an assessment year, then in such case, the Income-tax Act, 1961 will still remain in force until the Finance Act is enacted. However, till that time, the provisions of tax in such circumstances can either be one of the following, whichever is more favourable to the assessee:

- (a) provision of the Act in force during the preceding assessment year; or
- (b) The provision proposed in the Finance Bill (which is yet to be enacted).

Q2. Whether tax can be levied by way of notification/ circulars or rule?

In a very recent decision of *Hon'ble Supreme Court in case of ACIT vs. Bharat V. Patel [2018] 404 ITR 37 (SC)*, it was held that a Circular cannot be used to introduce a new tax provision in a statute which was otherwise absent.

In case of *CIT vs. McDowell & Co. Ltd. [2009] 314 ITR 167 (SC)*, Hon'ble Supreme Court has laid down a principle that the term 'Law' in the context of Article 265 means an Act of the Legislature and cannot comprise an executive order or rule without express statutory authority.

1.2 Article 271: Surcharge on certain duties and taxes for purposes of the Union.

As per this Article, the parliament has the power to levy surcharge on duties/taxes (except on GST) for the purpose of union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

Thus, even the Surcharge levied by the Finance Act on the Income Tax derives its power to levy such surcharge from Article 271 of the Constitution.

As per Article 270, duties, taxes and cess (includes income tax) levied by the union under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States. Thus, Income Tax collected by the government is subsequently also apportioned to the state government.

However, as per Article 271, the surcharge (including that collected on income tax) is earmarked only for the Consolidated Funds of India i.e. it cannot be distributed or shared with the state government.



As per Article 270, duties, taxes and cess (includes income tax) levied by the union under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States. Thus, Income Tax collected by the government is subsequently also apportioned to the state government.

1.3 Article 285 & 289: No tax on the property of Central/State Government.

Broadly, these articles provide that the union cannot charge tax on property and income of state government. Further, the state cannot charge tax on property of union, except where parliament passes specific legislation in this respect.

It is on account of these Articles, the 'Central Government' or the 'State Government' are neither included in the definition of the term 'person' u/s. 2(31) or 'assessee' u/s 2(7); of the Income-tax Act, 1961.

1.4 Article 245 & 246: Distribution of Powers to make law between Parliament & State Legislature.

a) Territorial Jurisdiction: Article 245:

The Parliament has the power to make laws for the whole or any part of India, whereas the State Legislature may make laws for the whole or any part of the State.

b) Legislative Jurisdiction: Article 246:

In order to avoid any multiplicity or overlapping of the laws, the Constitution has provided very clear distinction and exclusiveness with respect to who has the power to make law on which legislative subject.

Article 246(1) provides that only the Parliament has exclusive powers to make laws with respect to any matters enumerated in List I in the Seventh Schedule (referred as the 'Union List').

Article 246(2) provides that, both, Parliament as well as State Legislature have powers to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (referred as the "Concurrent List").

Article 246(3) provides that State Legislature have exclusive powers to make laws for the respective states with respect to any of the matters enumerated in List II in the Seventh Schedule (referred as the "State List").

Entry No. 82 of the Union List in Seventh Schedule of the Constitution reads as follows:

"Taxes on income other than agricultural income."

Thus, it is the Parliament which

has exclusive powers to make laws relating to Income Tax (except for agricultural income) and it is not the subject matter of the State Legislature. It is for this reason that the 'Income-tax Act, 1961' was passed in the Indian Parliament and not in any State Legislature, this same logic also applies in case of 'Finance Acts'.

Q1. Can the parliament impose Tax on agricultural income?

No. Entry No. 82 of Union List specifically excludes the jurisdiction of the Parliament to make laws in such respect.

Q2. Section 10(1) of the Income-tax Act, 1961 provides that 'agricultural income' shall not form part of total income. What would be the implication if no such exemption is provided?

If in case specific exemption to agricultural income had not been provided in the Income-tax Act, 1961 then it may have been covered under the ambit of 'income' as defined in Section 2(24) and could have been formed as the part of total income.



It is the Parliament which has exclusive powers to make laws relating to Income Tax (except for agricultural income) and it is not the subject matter of the State Legislature.

However, as stated earlier, the constitution is the supreme law; no law can violate any provisions of the Constitution and hence in such case if Parliament exercises powers to impose income tax on agricultural income, it would be *ultra-vires* and unconstitutional.

Q3. Who has the power to make law relating to income tax on agricultural income?

Entry No. 46 of the State List in Seventh Schedule of the Constitution reads as "*Taxes on agricultural income*". Thus, it is the State Legislature who has the power to levy income tax on agricultural income. However, presently, there is no

state in India which has made laws for imposing income tax on agricultural income.

(ii) **The Stem/Trunk - Procedural aspects for enacting a taxing statute.**

- Powers with the Lok Sabha:

Generally speaking, a Bill is a draft statute which becomes law after it is passed by both the Houses of Parliament and assented to by the President. All legislative proposals are brought before Parliament in the form of Bills. In this article we shall restrict the explanation only in respect of a Finance Bill.

Article 109 of the constitution provides for the procedure in respect of Money Bill. Clause

(a) to (g) of Article 110(1) enlist certain matters; the bill relating to which is construed as a 'Money Bill'. As per clause (a) of Article 110(1), a bill dealing with the matters relating to the imposition, abolition, remission, alteration or regulation of any tax shall be considered as 'Money Bill'

As per Article 117, a bill which is relating to matters specified in clause (a) to (f) of Article 110(1), shall be considered as a 'Finance Bill'. Thus, every Finance Bill is a Money Bill but every Money Bill may not be a Finance Bill.

Procedure for passing a Finance Bill and a Money Bill

| Finance Bill | Money Bill |
|--|--|
| It can be introduced/moved only on the recommendation of the President. However, if the amendment provides for reduction or abolition of any tax then recommendation of president is not required. | Recommendation of the President is not required. |
| Finance Bill as well as the Money shall not be introduced in the Rajya Sabha. They are introduced only in Lok Sabha. [Art. 117(1) & Art. 109(1)] | |
| It is then transmitted to the Rajya Sabha for its recommendations. The Rajya Sabha has to return the Bill with recommendations in 14 days. The Lok Sabha can either accept or reject the recommendation of the Rajya Sabha. | |
| After the above is done, the Bill is deemed to have been passed by both Houses of the parliament. | |
| Parliament has to pass the Finance Bill within 75 days of its introduction. | |
| If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final. [Art. 110(3)]. | |
| Once Bill is passed as above, it is presented before the President of India for his assent. The President can also recommend amendments. The houses have the power to pass the bill again with or without accepting the Presidents recommendation. However, in such case, the President cannot withhold his assent; he has to give the assent to such Bill. Once assent is received, the Bill is said to be enacted and is thereafter called as 'Act'. | |

- Powers with the President to pass Ordinance: Article 123

In last one year, we have come across two Taxation Ordinance, namely the Taxation Laws (Amendment) Ordinance, 2019 and The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020.

Circumstances in which Ordinance can be passed:

Ordinances are laws that are promulgated by the President on the recommendation of the Union Cabinet. Conditions for passing Ordinance:

- Parliament must not be in session.
- President is satisfied that circumstances exist which render it necessary for him to take immediate action.
- An Ordinance shall have the same force and effect as an Act of Parliament.
- Ordinances cease to operate either if Parliament does not approve of them within six weeks of reassembly, or if disapproving resolutions are passed by both Houses.
- President has the power to withdraw the Ordinance at any time.

(iii) The Roots - Preamble and Part III of the Constitution.

Unless the roots are nurtured properly, the tree won't stand on its own. Similar is the situation with any Law enacted in India, unless the Law is within the ambit and in accordance with the Preamble and Chapter III

of the Constitution, it won't survive.

a) Preamble of the Constitution:

If we question ourselves that why should we abide by the Income-tax Act, 1961, the answer to it would be that it is enacted by the Parliament which derives its power to make such Law from the Constitution of India. The next question could be, why should we abide by the Constitution of India? What compels us to abide by the Constitution?

The answer to this lies in the 'Preamble' of the Constitution, which reads as:

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION?"



Unless the roots are nurtured properly, the tree won't stand on its own. Similar is the situation with any Law enacted in India, unless the Law is within the ambit and in accordance with the Preamble and Chapter III of the Constitution, it won't survive.

By the virtue of this Preamble, all the people of India have solemnly resolved to adopt, enact and give to themselves, the Constitution of India and hence all the people of India are required to adhere to this pledge. Various attributes of this preamble build the basic and fundamental structures of the constitution.

It is obligatory for any Law, Judicial, Legislative, Administrative or Executive authorities to adhere, practice and promote these basic structures.

The Supreme Court in case of *Kesavananda Bharti vs. State of Kerala [(1973) 4 SCC 225]* had laid down 'basic structure doctrine', according to which the Parliament can amend the preamble in accordance with Article 368, however, it cannot alter the basic structure of the Constitution.

The importance and utility of the preamble has been pointed out in several decisions of

the Supreme Court. Though, by itself, it is not enforceable in a Court of Law (as held in A.K Gopalan Vs. State of Madras (1950,SCR 88(198)), the Preamble to a written Constitution states the objects which the constitution seeks to establish and promote and also aids the legal interpretation of the Constitution where the language is found to be ambiguous as held in RE Berubare Union (AIR 1960 SC 845 (846).

b) Chapter III: Fundamental Rights

Any Law which is prejudicial to 'Fundamental Rights' could be held 'unconstitutional'. Certain vital provisions of the constitution which needs to be observed while drafting a statute:

Article 13: Laws inconsistent with or in derogation of the fundamental rights.

Article 13 provides that any law which hampers/contravenes the fundamental rights conferred by the constitution shall be, to the extent of such contravention, regarded void.

Article 14: Equality before law.

According to this article, a person cannot be denied of equality before the law or the equal protection of the laws within the territory of India.

Doctrine of '*manifest arbitrariness*' is also applied by Supreme Courts while striking down statutory provisions which are violative of Article 14. When a Law provides something which is excessive and disproportionate, such legislation would be 'manifestly arbitrary'.

Recently, *Supreme Court in case of Shayara Bano and Ors. v. UOI*, [AIR 2017 SC 4609] held that a provision of a law can be held violative of Article 14 whenever legislation is "manifestly arbitrary" i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment.

Article 19(1)(g): Right to practice any profession or to carry on any occupation, trade or business.

Article 19(1)(g) provides Right to practice any profession or to carry on any occupation, trade or business to all citizens. However, this article does not confer the right on the citizen to do anything which is illegal in eyes of law.

Further, under Article 19(6), the legislative authorities are not prevented from making a law imposing reasonable restrictions in the interest of the general public. Thus every citizen has this fundamental right to carry on business/profession and hence a law/ a provision of law which prevents a citizen from exercising his fundamental right or causes hindrance to business/profession can be held unconstitutional. However, such right is not absolute and unfettered and can be subjected to reasonable restrictions in the interest of general public in terms of Article 19(6) as stated above.

Article 27: Taxes cannot be levied for promoting a particular religion.

As per this Article a person cannot be compelled to pay



Doctrine of 'manifest arbitrariness' is also applied by Supreme Courts while striking down statutory provisions which are violative of Article 14. When a Law provides something which is excessive and disproportionate, such legislation would be 'manifestly arbitrary'.

any taxes which are specifically levied to meet the expenses for the promotion or maintenance of any particular religion or religious denomination.

Endnote

It is undisputed fact that the Constitution of our country acts like invincible Bible for the people of India as well as for the legislature, judiciary, and executive authorities. It is therefore vital for the Chartered Accountants understand these basic provisions of the Constitution as the origin and even the sanity of any Law in India ultimately relates to the Constitution. ■■■

References:

- 1) *The Constitution of India*
- 2) *The Income-tax Act, 1961*
- 3) <https://www.taxmann.com/>