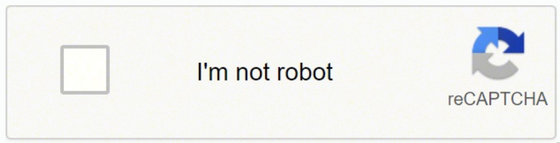

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5. This order relies on the meaning of International Transaction provided in Explanation (i) to Section 92B of the Act. Reduction In Time For Reopening Of Income Tax Proceedings For reopening of Income Tax Assessment, the time limit for reopening of income tax assessment proceedings has been reduced to 3 years from the earlier 6 years. In no event the author will be liable for any direct and indirect result from this Article. From AY 2021-22 onwards, goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill. Similarly, Explanation to Section 92B of the Act, which covers business restructuring, would only have application if said restructuring/ reorganizing impacts income. Therefore as per amendment, the presence of Vodafone establishment in India or the residence or place of business of Vodafone or its business connection in India is not necessary for deduction under section 195 but Vodafone had sufficient nexus in India. The Act was amended such that it provides for the following: INCOME THROUGH TRANSFER OF CAPITAL ASSET SITUATED IN INDIA: – SECTION 9: it provides that the following income shall be deemed to accrue or arise in India: All income arising directly or indirectly Through any business connection in India or From or through any property in India or Through any asset or source of Income in India or Through the transfer of capital asset situate in The following explanations 4, 5, 6 and 7 was inserted through Finance Act 2012 to section 9(1)(1). The objective of the agreement is for Promotion and Protection of Investments (India- Netherland BIT). JUDGMENT The tax is levied on the basis of the source and the source is the location where the sale takes and not where the product is derived or purchased from. The application of the principle of lifting of the corporate veil in all transactions done with an objective of evading taxes. Now, there will be completely new system of online registration. Thirumalaisamudram | Nithya Parvathy.RG Soundarya .A. The court was of the view that the transaction took place only with intent to invest in India and not evade tax. Application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11. Impact of the explanations on the final verdict: From explanation 4 added it can be deduced that any income which arises either directly or indirectly by means of or by reason of transfer of assets in India shall be deemed to accrue or arise in India and is taxable in the hands of Hutchison company, Hong Kong. No relevance of Section 92(2) in the present case: Section 92(2) of the Act deals with a situation where two or more AEs enter into an arrangement whereby they are to receive any benefit, service or facility. In this case, the income from the transfer is accrued by the HTIL and not Cayman Island Company (CGP). In absence of any prevalent rule of binding precedent of earlier awards, the international arbitration tribunals, functioning under ICSID and UNCITRAL, do consider previous awards to have a persuasive value. The meaning of income will not include capital receipts unless it is specifically mentioned as provided in Section 2(24)(vi) of the Act. Therefore ordering to pay tax to amounts involved in International Transaction tantamount to imposing a penalty for entering into a transaction as no taxable income has been incurred. BOMBAY HIGH COURT Vodafone India Services Pvt. Thereby the taxpayers will try to exploit the unintended loopholes in India's tax law. One or more new partners or members are admitted. It was a revolutionary but a clever move made by the GOI to tax the Vodafone company which faced severe criticism from the global investors. The Effects Doctrine Extra-territorial operation of Section 195 of the I.T Act provides that any state may impose liabilities, even upon persons not within its territory, for conduct outside its borders that has consequences within the borders of its state. CRITICISMS TO THE SC JUDGEMENT: The judgment pronounced by the SC in this case has been to subject to severe criticisms. Explanation 4: it clarifies that the word "through" shall mean and include and shall be deemed to have always included "by means of", "in consequence of" or "by reason of". It observed that it is open to charge tax on notional profits and impose charge on the resident.12 The aforesaid provision of Section 42(2) of the 1922 Act was incorporated in its new avtar as Section 92 of the said Act. Neither holds the right of control or management of such foreign company or entity; b. The Supreme Court held that it is the duty of the court to find the nature of the transaction and when doing it; it must look at the whole transaction and must not deal the elements of the transaction separately. The fair market value of the capital asset or stock or both on the date of such receipt shall be deemed to be the full value of the consideration. But, CGP Investments being a 100 % subsidiary company of Hutchison, Hong Kong is completely controlled by the latter and thus, Hutchison does not come within the scope of this exception. Recently, the Indian government has challenged the arbitration award in Singapore Court. (iii) Agricultural land in India, not being land situate- (iv) 6 per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government; (v) Special Bearer Bonds, 1991, issued by the Central Government; (vi) Gold Deposit Bonds issued under the Gold deposit Scheme,1999. This exemption is proposed to be made available to such senior citizens who have only interest income apart from the pension income in the same bank account. Increase In Safe Harbour Limit For Primary Sale Of Residential Units In order to incentivise home buyers and real estate developers, increase in safe harbour limit from 10% to 20% for sale of residential units if: – Sold between 12th November, 2020 to 30th June, 2021 – Applicable only on first allotment – Consideration upto Rs. 2 Crore This means that home buyers, who purchased properties with values below the circle rate by up to 20%, will not have to pay additional tax. The issue of shares by the Vodafone to its holding company and receipt of consideration of the same is a capital receipt under the Act6. L.K. Ratna & Ors (1986) 4 SCC 537 5 Krishnaji Ketkar vs Mahomed Haji Latif & Ors on 19 April,1968 AIR 1413, 1968 SCR (3) 862 6 Bombay High court Judgment para 14(f) 7 Cadell Weaving Mill Co. P. vs Commissioner Of Income-Tax on 6 February, 2001 8 Section 45 Income Tax Act 9 Section 2(24) (xvi) Income tax Act 10 Bombay High court Judgment para 13(e) 11 Bombay High court Judgment para 16(i) 12 Mazagaon Dock Ltd. It could be taxable only when this trade is protected by legislation. The Government has already introducedfacelessassessment and appeal this year. Tax laws must be stable in order to attract foreign (or even domestic) investment. by Aditi Mukundan and Mansi Seth, Nishith Desai Associates 22 Judgment para 16 23 Judgment para 7 24 Judgment para 68 25 Judgment para 5.12 Page 2INCOME TAX ♦ Income Tax Rates There is no change in the Rates of Income Tax for the AY 2022-23. In 2014, pursuant to a survey action carried out at the premises of Cairn India, the Indian income-tax authorities was of the view that the transfer of shareholding in Cairn Jersey had the effect of transferring the business in India and therefore, in view of the retrospective amended income-tax laws, Cairn UK was liable to pay capital gain tax in India. The provision for charging income tax must not be expanded to impose a tax burden which would otherwise be non-taxable. If there is any impact of income on account of business restructuring/reorganizing, then such income would be subjected to tax as and when it arises whether in present or in future.10 In this case, such a contingency does not arise as there is no impact on Income which would be chargeable to tax due to issue of shares.11 RESPONDANT The issue of Chapter X of the Act being applicable is no longer an untouched matter because similar provision as provided in Section 92 of the Act was also provided under Section 42(2) of the Income Tax Act, 1922. Liability shown in GSTR-1 liable for recovery without SCN. Similarly, developers selling units below the circle rate by up to 20% will not have to pay additional tax. Neither holds the right of management or control in relation to such foreign company or the entity b. As the Supreme Court decided in favor of Vodafone, subsequent amendments to the Act were brought in by the legislative authorities to reverse the judgment. B(Hons) SASTRA Deemed to be University. It is argued that SC has set a precedent that brings into jeopardy thousands of crores of potential revenue.it was also pointed out that tax avoidance through artificial devices is now a days very much prevalent in the industry and many large firms gain huge sums of money through such schemes. Therefore, the government must stop taking measures to recover tax from Vodafone. Value of asset– the value of the asset shall be fair market value of such asset without reduction of liabilities, if any in respect of the 3. Therefore, Vodafone was not legally obliged to respond to the section 163 notice issued which declares a purchaser of an asset as a "representative assessee". SECTION 2(47) IN THE INCOME TAX ACT Transfer", in relation to a capital asset, includes, (i)the sale, exchange or relinquishment of the asset; or (ii) the extinguishment of any rights therein; or (iii) the compulsory acquisition thereof under any law; or (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock- in- trade of a business carried on by him, such conversion or treatment; or (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of TOPA Act ; or (viii) Any transaction (whether by way of becoming a member of, or acquiring shares in, a co- operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property. Limitation Of Benefits clause. But in order to make explanation 5 operational the Finance Act 2015 provided certain clarifications: Explanation 6: For the purpose of this clause, it is hereby declared that- 1. Some professionals say that the SC could have considered this issue and that is the reason why the decision is in favour of the foreign investor (Vodafone). All the partners or members continue with change in their respective share or in share of some of them. Therefore indirect movement of capital assents cannot be included by expansion of the provision. Online sale of goods and online provision of services shall include one or more of the following activities taking place online: Acceptance of offer for sale; a. The Income Tax Department will also share this information with taxpayers. However, with effect from 1st April 2021, original TDS and TCS rates will be applicable for FY 2021-22. The entire value earned by HTIL "was only on account of the fruits of the investment made by HTIL in India, goodwill/brand value generated by HTIL for the Hutch brand in India, the telecom licenses granted in India, customer base in India and the prospect of future development and expansion in India17." In the context of capital gains on company's shares, the settled legal principle is that shares are located where the company's share register is maintained, normally the place of its incorporation18. Tax Residency Certificate In this case, the court held that the treaty and circular will not restrict the Revenue from denying Treaty benefits, when it is proven that the Mauritian company at the time of disposal of shares, made the transaction with intent to avoid tax. Such application or intimation must be accompanied by certain documents prescribed on this behalf e. Though various amendments to tax laws have been made, it has been a continuous defeat to the country regarding these offshore transfers. This is a landmark judgment pronounced by the Supreme Court of India. (ii) Any other presence in any manner whatsoever in India. The balance in the capital account of the specified person in the books of accounts at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition without taking into account increase due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset Reconstitution means: a. d. The Mauritius companies are considered to be 'post box companies' and its remarked that the benign attitude of the tax authorities has led to a blatant evasion of taxes. Nor holds any rights in such company which would entitle it to either exercise control or management of the company or entity that directly owns the assets situated in India or c. Claim refund of unutilised ITC, without payment of IGST with bond/LUT With the new amendment, a registered person making zero rated supply can claim refund of unutilized ITC, without payment of IGST with Bond/LUT. Interest Income On PF Contribution Above Rs. 2.5 Lacs Or Rs. 5 Lacs To Become Taxable In A Year Earlier interest income on PF contribution was exempt from tax. Following such criticisms India tried to settle matters amicably with Vodafone but all its attempts faced failure. However following amendments have been made which will take effect from 1st April 2022, and apply from AY 2022-23 onwards. It can be justified by piercing the corporate veil. It is well settled that capital receipts do not come within the ambit of the word 'Income' under the Act, save when so expressly provided as in the case of Section 2 (24) (vi) of the Act. GROUNDS ON WHICH THE ORDER CAN BE REVERSED 1. But it is known that the imposition of a tax liability based on a retrospective amendment is held to be breach of fair and equitable treatment laid down in Article 4(1) of the India-Netherland BIT. Ltd, Mumbai vs Ito 6(2)(4), Mumbai on 7 November, 2019 It was held that the Vodafone case and CBDT Circular was not applicable in this case. CONCLUSION Retrospective amendments are amendments which have backwards operation i.e., they come into effect from a past date. From FY 2020-21 onwards, fair market value of capital assets on slump sale transaction will be deemed to be the full value of the consideration received by the seller of the asset. Brouch Borough Municipality and others 6 1969(2) SCC 283 the court remarked that even if the legislature has competence it cannot merely pass a law to which the verdict of the court shall not bind as such an act is a tantamount to reversing the decision of the court by exercise of judicial power which the legislative authority does not possess. Last Date For Filing Of Belated Or Revised Returns Of Income Reduced By Three Months Currently, belated and revised ITRs can be filed voluntarily after the normal deadline, up to March 31 of the assessment year. As per the amendment to The Finance Act,2021, u/s 129 of the CGST Act penalty applicable under detention, seizure, and release of goods and conveyance in transit, will be: S No. Particulars Where the owner of the goods comes forward for payment of such penalty Where the owner of the goods doesn't come forward for payment of such penalty 1. Thereby the case was decided in favor of Cairn UK and it was not liable for capital gains tax. Any rights in or in relation to an Indian company, 3. 2002. Hence, in this case the capital asset in India has been transferred by Hong Kong to Vodafone. In this case, Hutchison's gain arose from the sale of shares of CGP, a capital asset located in Cayman Islands. The Supreme Court held that the action of revenue in seeking to tax a resident in respect of profit which he would have normally made but did not make because of his close association with a non-resident. This will applicable from AY 2021-22. It held that to apply the words "directly or indirectly" to the transfer of a capital asset (such as HEL) "would amount to changing the content and ambit of section 9(1)(i). of the value of the goods or 200% of the tax payable on such goods, whichever is higher, 2. The penalty for not furnishing PAN or giving inoperative PAN is Rs. 10,000. BINDING FORCE OF VODAFONE CASE The "Doctrine of Stare Decisis," as prevalent in common law legal systems. By means of this verdict certain principles have been established and recognized by the SC including: Principles relating to tax policies and plans The validity of tax avoidance by providing the taxpayers the right to reduce their liabilities to a maximum extent by legitimate arrangement of their income and business affairs provided nothing contrary to such act is specified in the enactments. In Shri Prithvi cotton mills limited and another v. Retrospective amendments are generally given to taxation laws to "clarify" the previously existing laws. The legal form of the transaction was that Hutchison had transferred shares of a Cayman Island company. This will help taxpayers in saving interest on late payment of advance tax due to incorrect estimation of dividend income. However, when it is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited back to corpus to the extent of such deposit or investment. For the second route the Government shall specify class of persons and class of goods and services who can make payment of IGST and claim refund of tax paid. For Serious Tax Evasion cases, where evidence of concealment of Income is more than Rs. 50 Lacs, notice can be issued beyond 3 years but not beyond 10 years. However his will not include deemed dividend under Section 2(22)(e). This threshold limit of turnover was increased to Rs. 5 Croreif the cash receipt and payment made during the year does not exceed 5% of total receipt and total payment respectively. Further it declared that the HC and SC are empowered to determine the validity of any law of the legislature. The Court clarified that Justice Reddy's observations extended only to artificial and colourable devices. 20 Tax avoidance and tax planning The Supreme Court made a detailed difference between tax evasion and tax planning. The arbitration tribunal also held that the terms of the agreement was not complied by India and it is established that India has contravened the provisions of the agreement. To eliminate the human interface and to increase transparency in disposal of appeals, a National Faceless Income Tax Appellate Tribunal Centre will be established for electronic communication between ITAT and Assessee. In case of Chapter X of the Act, the matter of real income concept has no applicability. The SC is blamed for not setting right the mistake it made by transgressing the McDowell judgment in the Vodafone verdict. AMENDMENTS IN TAX LAW RELATING TO VODAFONE CASE In 2012, the government of India changed the Supreme Court's decision by proposing an Amendment to the Finance Act, which gave the power to Income Tax Department to retrospectively tax such deals. But it has the right to effect laws affecting a class of people in general. Income pre requisite for applicability of Section 56(1): For application of Section 56 of the Act , an income must arise which can be taxed. Capital receipts cannot be brought to tax unless specifically/ expressly brought to tax by the Act7. ***** Disclaimer: The Article is based on the Relevant Provisions and as per the information existing at the time of the preparation. Therefore the interest of the recipient is divested to the petitioner and hence is liable for capital gains tax. Amendments Related To Charitable Trusts and Institutions Under the existing provisions of the Income-tax Act, 1961, voluntary contributions made with a specific direction that they shall form part of the corpus of trusts, institutions, funds etc. It was held that even if the burden of proof does not lie on a party, the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue.5 Therefore, when the Petitioner has challenged the constitutional validity of the Amendment to Sections 191 and 201 of the I.T. Act by the Finance Act, 2008, then the same must be in context of certain facts pleaded and proved by evidence in the form of documents on record and not in vacuum or in the abstract. Placing the purchase order; b. The tax laws must be strictly construed and tax can be laid only when the language of the statute unambiguously states so. However, in case of non-realisation of sale proceeds, he will be liable to deposit the refund so received along with the applicable interest under section 50 of the CGST Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances. A court's decision can only be altered when unless it is fundamentally incorrect. A liberal tax policy would attract Foreign Direct Investment into India. It further urges to avoid the misconception that presence of corporate structures in tax free countries is necessarily a scheme for avoiding tax. Section 9 of the Act The Supreme Court explained that section 9(1)(i) gathers in one place various types of income that are deemed to accrue or arise in India. It was opined that the judgment in McDowell though reverted by 2 other decisions (Azadi Bachao Andholan and Wallfort) has dealt with the issue in the right perspective. I-T Department To Seek Information From Stock Exchanges, Registrars and Depositaries From FY 2021-22, Income Tax Department will have access to information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income. EQUIVALENT CITATION: 2009(4) BomCR258, (2008)220CTR(Bom)649 FACTS Vodafone International Holdings (VIH), a Dutch Company procured 100% shares in CGP Investments (Holding) Ltd a company situated in Cayman Island, for USD 11.1 billion from Hutchison Telecommunications International Ltd in the year 2007. State of Kerala and another 9 (2014)12 SCC 696 the court held that as per the doctrine of separation of powers enriched in the constitution all the 3 organs are independent and thus a law can be set aside only when it breaches the principles of equality as enriched in the article 14 of the constitution. Taxable Goods 200% of tax payable 50%. OBSERVATION No express legislation on capital account transaction: Section 92(1) of the Act states that an income from an international transaction is a condition precedent for the applicability of Chapter X. However, if the employee is contributing to the fund and there is no contribution to such fund by the employer, then interest income on contribution by employee in excess of Rs.5,00,000 will be taxable. Chapter X of the Act is a complete code by itself and not merely a machinery provision to compute the ALP14. Similarly, in State of Tamil Nadu v. From the second exemption it can be seen that to be relieved from tax burden in case of transfer of shares of a foreign entity, here which is shares of CGP Investments, Mauritius, which indirectly holds Indian assets the transferor or the seller in the given case being Hutchison, Hong Kong must not manage, control or hold any rights which may provide for such control over the foreign entity whose shares are being transferred i.e., CGP Investments. Payment of consideration; or d. Similarly, explanation 5 brings within its scope the transfer of shares of CGP investments, Mauritius being a company incorporated outside India. It ends up hindering companies which interpreted the rules, knowingly or unknowingly in a different way. This brings capital gains chargeable under Section 45 of the Act, to tax within the meaning of the word 'Income'.8 In this case, attention was drawn to the definition of `Income'9 in the Act which includes in its scope amounts received arising or accruing within the provisions of section 56(2) (vii)(b) of the Act. Disallowance of Employees' Contribution To Labour Welfare Funds (ESI/PF Etc.) If Not Deposited By Due Date With effect from 1st April,2021 any amount received as an employee's contribution towards provident fund, or ESI funds, shallbe treated as income of the Employer if the same is not deposited on or before the due date as provided under the PF and ESI Acts. CONSTITUTIONAL VALIDITY The respondent contended that the petitioner has not produced the important documents that are essential for determination of tax charges in India and thereby, the petitioner cannot challenge validity of provisions in issue. The selling of HTIL's CGP shares to Vodafone or VIH amount to transfer of capital assets under the scope of Section 2(14) of the Income Tax Act and therefore not chargeable under capital gains tax on all rights and entitlements resulting from the shareholder agreement, etc., which form an integral part of CGP 's shares. For section 75 "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37 (GSTR-1), but not included in the return furnished under section 39. The Senior advocate and architect behind Vodafone's win Harish Salve opined his view on the retrospective amendments being a crusher of India's image in the minds of the overseas investors and citizens. He stated that the prosperity of the country depends upon the economic and political institutions of the country, on their stability and transparency. It is the hidden benefit in the transaction which is being charged to tax. Thereby, this case was called 'retrospective taxation case'. Impact of the exemptions given in Explanation 7: As the Vodafone case revolves around indirect transfers the second exemption provided is of importance. It is a general principle that a holding company is not liable for the acts of the subsidiary. Rendering Hutchison gains taxable in India would entail imposing "substantial tax liabilities, after the fact, on entities that would avoid such liabilities according to this formal rule"19. As per The Finance Act 2021, the term liable to tax in relation to a person means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided. SUPREME COURT Vodafone International Holdings ... vs Union Of India & Anr CITATION-[2012] 1 SCR 573 ISSUE Whether the Indian Revenue Authority can tax a sale of shares between two non-resident companies on an offshore transaction where the controlling interest of an Indian corporation is purchased on the basis of that transaction? The government is of the opinion that the matter of taxation is not covered under the treaty and taxation is a sovereign right of the country. To sum it up, Petitioner simply argued that it was not legally right to hold that Hutchison gains were taxable in India. Consideration was also passed outside India. Only after this case, strict provisions to govern tax evasion by non-resident companies through indirect transfers were made. Issuing of shares at a premium is on capital account gives rise to no income. Smith 39 (1925) AC 371 as quoted in paragraph 95 of the Judicial Opinion 19 Weisbach, David A. Subsequently, Cairn India acquired the entire business of the Cairn group in India. However, what is brought to tax is not the quantum of amount lent and/or borrowed but the impact on Income due to such lending or borrowing. c. Hence, though the government is granted the power to legislate laws and amendments with retrospective effect, its scope is restricted to exceptional cases and so before making any retro operative law consideration of its necessity, applicability and effects by the government is vital. Taxability On Receipt Of Capital Asset Or Stock In Trade On Retirement Of A Partner And/Or Dissolution Of Firm At the time of dissolution or reconstitution of the firm, where a partner /member receives any capital asset or stock in trade or both, it shall be a deemed transfer in the hands of such Firm/AOP/BOI and profits/gains arising on such transfer based on FMV of such asset shall be taxable as business income or capital gains in the previous year in which the asset was received by the Partner/member. 9(1)(1) in its 2nd exception provides that CGP Investments is a 100 % subsidiary company of Hutchison company and is wholly controlled by the latter company. Hence, any capital gain arising from sale of the shares of CGP Investments is taxable at source in its hands. This award does not mark the end of dispute as the Indian Government has the opportunity to challenge it before the High Court of Singapore. Therefore, the difference between ALP and the contracted price would be added to the total Income. Withholding tax obligations: sections 195 and 163 of the Act The transaction entered into by the companies is between two non-resident entities and was executed outside India. However, at least one existing partner or member should continue to be partner or member of the specified entity after admission of the new partner(s) or member(s); or c. Cairn Jersey owned subsidiaries in India. b. Transfer of HTIL's property rights by extinguishment The court held that the case concerned the sale of shares and not the sale of assets. The definition applies to issue of shares to a resident in India. Thirumalaisamudram | Abirami. "The Supreme Court noted that the words "directly or indirectly" in section 9(1)(i) of the Act refer to the income and not the transfer of a capital asset (property). Charge and measure of tax entirely different: The tax can be charged only on income and in the absence of any income arising, the application of the measure of ALP to the transfer value does not arise. Therefore, the charging section is inherent in Chapter X of the Act. Voluntary contributions made with a specific direction that it shall form part of the corpus shall be invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus. The international arbitration proceeding was initiated by Vodafone International Holdings B.V. (VIH or Vodafone) against the government of India regarding the retrospective amendment made to Indian tax Permanent Court of Arbitration (PCA) held that the imposition of taxation through a retrospective amendment to domestic tax laws for imposition of tax, was in violation of "fair and equitable treatment" provided under the Agreement between the Republic of India (India) and the Kingdom of Netherlands (Netherlands). In this case, the Parliament passed the amendment to the Finance Act in 2012, by retrospective effect and subsequently made Vodafone liable for tax payment. (vii) Both the Bombay High Court and the Supreme Court held in this case that "controlling interest" is not a capital asset. The establishment of corporate structures by multinational companies for business and commercial purpose. CIT [1988] 34 ITR 368 13 Taxation of notional income: a comparison of tax regimes-Manu Patra 14 Bombay High Court Judgment para 18(f) 15Bombay High Court Judgment para 6(g)3 16 Bombay High Court Judgment para 18(b) 17 Writ Petition No. 1325 of 2010, decision delivered on September 8, 2010 paragraph 54 18 Brassard v. 30th June Reduction in the time limit for issue of notice under section 143(2) of the Act from 6 months to 3 months from the end of the financial year in which the return is furnished. But the question as to the constitutional legitimacy of such amendments is a debatable question; though it is held valid in certain situations majorly it is held to be inconsistent. Clarify in both clause (23C) of section 10 and section 11 that for the computation of income required to be applied or accumulated during the previous year, no set off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed As per The Finance Act 2020 all existing trust or institutions have to apply for fresh and obtain fresh approval under Section 80G. The responsibility of deduction shall lie only on the buyer whose turnover exceeds Rs. 10 Crore. It had acquired telecom licenses to give cell communication in various circles in India starting from November 1994. Justice Radhakrishnan (in his concurring judgment) held that in case of absence of LOB clause in the Treaty, and in light of the existence of CBDT Circular No. 789 of 2000 and a TRC certificate, the Revenue cannot at the time of sale, disinvestment or exit from FDI in India, deny benefits to Mauritian companies by stating that the FDI was routed through a Mauritius company from somewhere else. OUTCOME The SC through its landmark judgment has removed certain uncertainties revolving around the imposition of taxes in the country. The Supreme Court held that strategic foreign direct investment (FDI) into India must be seen in a holistic manner. Amendments Related To Equalisation Levy The scope of Equalisation Levy has been widened. The court adopted the "look at" approach (as opposed to the "dissecting" approach) and held that the facts and circumstances of the present case must be viewed holistically. As per the Amendment in the Finance Act 2021 the Government has been empowered to attach provisionally, any property, including bank account, belonging to the taxable person or any person who has retained any benefit of the transactions in such manner as may be prescribed, after the initiation of any proceedings under Assessment, Inspection, Search & Seizure, and Arrest, Demands and Recovery. Therefore Hutchison's gain was not chargeable to tax in India; thereby, Vodafone BV in not required deducting tax at source under the Act. It was thus emphasized that the legislative history supports the stand of the respondent-revenue that even in the absence of actual income, a notional income can be brought to tax.13 Section 92(1) of the Act uses the word 'Any income arising from an International Transaction'. PROVISIONS Sec 2(14) of Income Tax Act-Capital Asset Sec 2(24) of Income Tax Act- Definition of Income Sec 5 of Income Tax Act-Scope of total income Sec 9 of Income Tax Act- Income deemed to accrue or arise in India Sec 45 of Income Tax Act-Capital gains Sec 191 of Income Tax Act-Direct Payment Sec 195 of Income Tax Act-Other sums Sec 201 of Income Tax Act-Consequences of failure to deduct or pay MAINTAINABILITY The respondent contended that the writ petition is not maintainable because the petitioner had an effective alternative remedy available under Income Tax Act.4 The petitioner cannot invoke the writ jurisdiction as there is a failure on part of the petitioner as they did not invoke the jurisdiction under tax law. However, where the total income of a person does not exceed Rs. 5 Lacs, the fee payable shall not exceed Rs. 1,000. Hence, the dominant purpose of entering into agreement by the two foreign companies is to acquire the substantial interest and of which one foreign company is held in the Indian company the municipal laws of the country would be applicable and hence Indian Tax laws will be applied. CAIRN's DISPUTE Cairn UK Holdings Limited, a company incorporated in the U.K. (Cairn UK), had a wholly- owned subsidiary, Cairn India Holdings Limited, a company incorporated in Jersey (Cairn Jersey). 1. The tax shall not be deducted under this provision if the tax is deductible or collectible under any other provision (motor vehicle, jewellery, etc.) except Section 206C (1H). Explanation 2 has been inserted in section 195(1) to clarify the obligation to comply with section 195(1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, residents, non-residents, whether or not the non- resident has: – (i) A residence or place of business or business connection in India. However such consideration shall not include consideration for sale of goods or provision of services owned/provided by a person resident in India or by a permanent establishment (PE) of a person non-resident in India, if such sale/provision is connected with such PE. Input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in GSTR-1. The Petitioner itself had submitted to the jurisdiction of Chapter X of the Act by filing/submitting Form 3-CEB, declaring the ALP16. It was held that any profit or gain arising from the transfer of a company in India has to be considered as a profit and gains of the company which actually owns and controls it. Such application must be filed by 30.06.2021 i.e. within three months from the 1st day of April, 2021. The court held that Mauritius is a clean jurisdiction to route investments into India and, provided the transaction is not found to illegal or colourable which was designed to evade tax. This judgment as a contract to the judgment in the 2G scam is considered to be arbitrary in nature. On bringing the retrospective amendment which states that any income which arises either directly or indirectly by means of or by reason of transfer of assets in India shall be deemed to accrue or arise in India and can be 2. From the above decisions its clear that the legislature cannot bring into effect any law which overrides court's verdict and affects the rights of an individual alone as in the landmark case of Vodafone. A. Anyone with taxable income of up to Rs 50 Lacs and disputed income of up Rs 10 Lacs will be eligible to approach dispute resolution committee. "An Economic Analysis of Anti-Tax-Avoidance Doctrines" 20 United States v. Advance Tax Liability On Dividend As per The Finance Act 2021, advance tax liability on dividend income shall arise only after receipt of dividend income. JUDGMENT The transaction entered by the Petitioner amounts to transfer of a capital asset and not a transfer of controlling interest ipso facto in a corporate entity and is chargeable to tax in India. B | 4th year B.B.A.LL. This will provide quicker relief to small taxpayers. Application out of corpus shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11. The amendment was held to be a badly drafted law as it had affected to nullify the decision of the highest court of the Nation. It was a 3-judge bench decision consisting of Chief justice S.H Kapadia, Swatanter Kumar and K.S. Radha Krishnan. This action was challenged by Cairn UK and is currently sub-judice before the High Court of Delhi in India. Hutchison has been part of Indian telecom business since 1994, and had been paying income tax in India. This way through such amendments the coverage of section 9(1)(1) has been increased retrospectively to include indirect transfers. Nor entitle it to voting power exceeding 5 percent of total voting power of the company or entity that directly owns the assets situated in India. The court held that corporate can be pierced and the principal company can be held liable for the acts of the subsidiary company when it is shown that the company has misused to achieve certain wrongful objectives. So, capital gains to be taxed under Section 45 of the Act are deemed to be income under the Act. CONTENTION PETITIONER Section 9 of the Act provides the formal source rule which provides for taxing gains that arise from the transfer of capital assets that are in India. Lastly the need for a holistic view or approach when dealing with cases involving companies having made investments in tax neutral countries. Chapter X of the Act provides that a transaction can be taxed only after working out the income after finding the ALP of a transaction. Allahabad High Court Rakesh Mahajan vs State Of U.P. And 4 Others on 4 December, 2019 "The legal relationship between a holding company and WOS is that they are two distinct legal persons and the holding company does not own the assets of the subsidiary and, in law, the management of the business of the subsidiary also vests in its Board of Directors."24 5. Professionals have said that there is a need for clarity and certainty in tax laws to attract foreign investments. The payment or receipt settled through a non-account payee cheque or non-account payee bank draft shall be deemed to be cash payment or cash receipt respectively. Linking Of PAN With Aadhaar The due date for linking Aadhaar and Income Tax PAN has been extended to 30th June 2021.In case of non-linking, your PAN Card would become inoperative and penalty is up to Rs. 1,000. Exempted Goods 2% of the value of goods or Rs 25,000 , whichever is less 5% of the value of goods or Rs 25,000 , whichever is less Presently there are two routes for making zero rated supply. Provisional Attachment In Case Of Fake Invoices Cases The penalty proceedings initiated for fake invoice/sham transactions of more than Rs. 2 Crore shall also be eligible for provisional attachment of assets. However, in view of Covid-19 the process had been deferred till 31.03.2021.On 26.03.2021,CBDT has notified new Rules and Forms for Registration of Trust, institutions including approval under section 80G. If the Hutchison gains were held taxable in India it would fortify India's taxing rights as a source country- if you earn value from India, you shall be taxed in India. By application of this doctrine, the Supreme Court held that the major purpose in Vodafone was to transfer the shares of CGP and not transferring the rights in HEL (situated in India). The Finance Act 2021 has extended the said outer date of transfer of residential property to 31-03-2022. Valuation Of Slump Sale Transactions Earlier Capital Gain on slump sale transactions of an undertaking was calculated as the difference between the actual sales consideration and the net worth (cost of acquisition + cost of improvement). . Moreover, any attempt to enforce tax demand on Vodafone would amount to breach of international obligations. Supply of goods or provision of services, partly or wholly GOODS AND SERVICE TAX Following amendments to CGST Act and IGST Act will come into effect from the date when they are notified. 4. The present transaction was carried out between two non-resident persons in a contract conducted outside India where the consideration was also rendered outside India and VIH is therefore not legally obligated to respond to the notice referred to in section 163 relating to the purchaser's care as a representative measure. This benefit will be applicable from the assessment year 2021-22. This act of SC is viewed as a welcoming gesture for the foreign companies to evade taxes in India, jeopardizing crores and crores of potential revenue to the country and the attitude of courts towards such artificial tax evading devices. The case was originally dealt by the Bombay HC. It was held that where a statute creates a right or liability and gives a special remedy when enforced, the remedy provided by that statute only must be availed of. Therefore, the objective appears to be a case of tax avoidance by using a grey area in Indian tax law. This is the foundation for company and tax laws. Relief For Senior Citizens Senior citizens above 75 years of age have been given relief from the requirement of filing of income tax if the full amount of tax payable has been deducted by the paying bank. IEC details need to be updated even if there are no changes in particulars. Including rights of management or control or any other rights whatsoever" Therefore, as per the amendment , the rights of the Hutchison Hong Kong in Indian company shall be included in the term capital asset under section 2(14) including the right of management and control (i.e.,) right to appoint directors , right to access to hutch brand in India and non-competing agreement . It has been replaced with a self-certified reconciliation statement. From AY 2022- 23 interest income will be taxable on contribution by employees exceeding Rs. 2,50,000 in the previous year. CONSEQUENCE OF THE CASE The government has got excessive flak for retaining India's "retrospective" tax on asset transfers after it recently lost a case against Vodafone in an international arbitration court. Therefore, the transaction entered into cannot be considered sham or colourable. The order of High Court of the demand of nearly Rs.12, 000 crores by way of capital gains tax would amount to imposing capital punishment for capital investment and it lacks authority of law and therefore is quashed. Thereby it is wrongful to understand that mean all tax planning is illegal, illegitimate or impermissible. It includes: "All income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India". From FY 2020-21 onwards, belated return or revised return are to be filed three months before the end of the relevant assessment year (up to December 31) or before the completion of the assessment, whichever is earlier. OTHERS Import Export Code (IEC Code) All IEC holders should update their IEC details during April-June of every year. Tax avoidance has become a common practice today. SECTION 195 OF THE INCOME TAX ACT- Other sums (1) Any person responsible for paying to a non- resident, not being a company, or to a foreign company, any interest shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income- tax thereon at the rates in force. The court also referred to the memorandum of understanding (MOU) signed between India and Mauritius which is to track down transactions tainted by fraud and financial crimes. Agreeing to the fact that there must be liberal tax policies in order to attract foreign investment, India need not stoop down too low to attract FDI. He criticized the instability shown by our government. EFFECT OF RETROSPECTIVE AMENDMENT: The onus to pay taxes fell on Vodafone after the government enacted the retrospective amendments. The registration will be valid for 5 years. Thereby, through such amendments the coverage of section 9(1)(1) has been increased retrospectively to include indirect transfers to cancel the effect of the SC verdict. The International Centre for Settlement of Investment Disputes (ICSID) and the UN Commission on International Trade Law (UNCITRAL) provides that the award shall be final and binding upon the parties to the dispute. TDS/TCS On Non Filer of income tax return At Higher Rates In case of non-filing of income tax return for last two years and where TDS /TCS is Rs. 50,000 or more in each of these two previous years, rate of TDS/ TCS shall be higher of: – Twice the specified rate or – 5% Salary income, payment to NR, income from lottery shall be excluded from this section. If on the other hand the book value as on date of transfer of the assets exceeds at least 15% of book value as on the last balance sheet date preceding the date of transfer, than instead of the date mentioned above the date shall be the specified date of valuation. The explanation inserted by finance Act 2012 to sec. In the present case, the Act provides for a complete machinery to challenge an Order of assessment, therefor the order can only be challenged by the mode prescribed by the Act and not under Article 226 of the Constitution of India. Consideration received or receivable for e-commerce supply or services shall not include considerationwhich is taxable as royalty or fees for technical services inIndia under the Income-tax Act read with the agreement notified by the Central Government under section 90 or section 90A of the Income-tax Act. It is submitted that Explanation (i) to Section 92B of the Act only states that capital financing

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