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## **Ignorance of Law is no excuse**

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### **Introduction**

The Indian tax regime is counted amongst one of the most complex tax regime in the Asia region. In India, the tax structure is divided into direct and indirect taxes. While Direct tax is imposed directly on the taxpayer and is paid directly to the government on the income earned. On the other hand, indirect taxes are levied on the supply of goods and services and the burden to collect and deposit taxes is on the sellers or service providers instead of the customers directly. Along with the bulky Tax regime, the bigger issue around the Indian tax laws is the uncertainty around interpretation of the provisions and also no uniform positioning of the provisions which enhances the ambiguity leading to harassments of ignorant tax payers of the country.

### **“Ignorance of law is of no excuse”**

The Latin maxim, “Ignorantia juris neminem excusat”, means “ignorance of law is no excuse for breaking it”. This is one of the essential principles of jurisprudence. The rationale behind this principle is that if ignorance was an excuse, every person who is charged for any offence or involved in a crime would merely claim that he was unaware of the law in question in order to avoid liability, even though he was well aware of the consequences of breaking the law. The law enforcement machinery shall come to a grinding halt if ignorance is accepted as a defense. Also it can also lead to mishandling of law on the part of law breakers and this can never be the intention of the legislature to enrich the law breakers by providing a shield of ignorance.

The Supreme Court in [STATE OF WEST BENGAL VERSUS ADMINISTRATOR, HOWRAH MUNICIPALITY & ORS. \[1971 \(12\) TMI 106 - SUPREME COURT\]](#). The conclusion was couched in these words:" The Assistant Divisional Manager of the company-appellant is not an illiterate or so ignorant person who could not calculate the period of limitation. Such like appeals are filed by such companies daily. The facts of this case clearly show, as observed earlier, that the mistake is not bona fide and the appellant has failed to show sufficient cause to condone the delay. "

The Allahabad High Court in the Commissioner of Sales Tax, U.P. v. Modi Food Products Ltd. Held that. Every individual is deemed to know the law of the land. The courts merely interpret the law and do not make law. Ignorance of law is not an excuse for not taking appropriate steps within limitation. Therefore the argument that the appellant did not know the true legal position is not one that can be accepted in law.

### **Exceptions**

The old theory that ‘ignorance of law is no excuse’ does not hold good in view of the complexity of laws in modern days as it is impossible for anyone to know all the technicalities of all the laws. A mere breach of law which is venial in character will not lead to the inference that the assessee wantonly committed the default thereby making himself liable for the penal consequences. The tax laws in this country are so complex and complicated that even a person specializing in this field, including tax administrators, may not understand the law in the correct perspective or a particular provision may go unnoticed because of the number of amendments made to the tax enactments from year to year. Under these

circumstances, it would be a travesty of truth and justice to hold that an assessee ought to have known the correct law and comply therewith, even though he was not aware of the provisions. Thus, one must judge the matter by taking into account the totality of circumstances.

Whether the ignorance of law may or may not constitute a valid excuse for justifying with a provision of the statute will depend upon the nature of default. If it is merely technical breach, no penalty should be implicated because the levy of penalty would necessarily implies existence of some guilty intention on the part of the defaulter or the offender. In order to determine the existence or absence of guilty intention on the part of the assessee, one will have to consider all the surrounding facts and circumstances. Whether by committing default of non compliance with a statutory provision of law, an assessee has derived benefit, gain or advantage, whether by such a default or non compliance the assessee has defrauded the Revenue or caused any loss to the revenue ? These are some of the factors which will have to seriously considered before considering the fact as to whether ignorance of law on the part of the assessee or his consultant can constitute valid excuse or reasonable cause.

The Supreme Court in the case of [MOTILAL PADAMPAT SUGAR MILLS CO. LIMITED VERSUS STATE OF UTTAR PRADESH AND OTHERS \[1978 \(12\) TMI 45 - SUPREME COURT\]](#), held that

"It must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law. Over a hundred and thirty years ago, Maula J. pointed out in *Martindale v. Falkner* [1846] "There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so." Scrutton L.J. also once said: "It is impossible to know all the statutory laws, and not very possible to know all the common laws." But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in *Evans v. Bartlam* "The fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application." It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the appellant had full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right.

Also in case of [KAUSHAL DIWAN. VERSUS INCOME-TAX OFFICER. \[1982 \(11\) TMI 74 - ITAT DELHI-A\]](#), ITAT Delhi, for observed that,-

It cannot be considered that each assessee, whether small or big, must rush to an income-tax specialist, practising as a lawyer or a chartered accountant, for his income-tax assessment especially when the income earned or being earned by him was too low. It cannot indeed be such a policy of the Government. In fact, on the other hand, an effort was being made to simplify the law so that the people could pursue their assessments before the department in a simple manner and that they do not have necessarily to depend on the professionals.

In the case of [WTO vs S. P. Jayakumar 1982 \(7\) TMI 178 - ITAT MADRAS-A](#) " The Bench observed that the plea of ignorance of law can be treated as a proper explanation. Such explanation can be said to have been substantiated when it is shown that: (a) he was assisted by a professional chartered accountant who has not brought to his notice the applicability of provisions of [s. 2\(22\)\(e\)](#) of the Act and (b) by making a statement that this is the first year in which these provisions came to be applied in assessee's case. It could thus be seen that the assessee tendered an explanation which was substantiated and thus the burden is cast upon the Revenue to prove that the explanation is false".

### **CBDT Guidelines**

#### **Department must not take advantage of ignorance of an assessee**

The State expects the tax administrators to act fairly and competently in the performance of their fundamental and onerous duty to collect taxes on its behalf. However, it is well settled and non negotiable

that the taxes so to be collected need to satisfy the touchstones of "just" and "due" taxes. The word "just" presupposes "fairness" in the actions of the tax administrators who are acting for and on behalf of the Government of India. The mind set needs to be re-oriented to consciously acknowledge that the duty and power to collect taxes is not being exercised on behalf of an alien foreign power in a colonial state who may have needed to fill its coffers by subjecting its colonies to the arbitrary actions. The power is exercised on behalf of the State and pre-supposes that it is exercised responsibly and fairly." Similarly it has also been observed in the aforesaid decision that; "In today's digital world, tax compliances necessarily have increased. However, the benefit of actual and complete knowledge of financial nuances and Taxing Statutes coupled with computer literacy has remained restricted to a large extent only to a few experts. The tax authorities constitute some of these few elites who have been equipped by the State by providing training and courses in order to hone the skill and competence with the use of cutting edge technology. The ignorance and helplessness of the masses who are required to address the values of their inherited property, sales etc. of agricultural lands etc. before the tax authorities glaringly stand out as every day examples of some failure and malaise. The tax administration is not expected to collect taxes based on the ignorances of the assessee but is expected to ensure that in the discharge of their duties and responsibilities, the citizens on behalf of whom the tax administration functions are advised, counseled and guided towards tax compliance s. It is a well known fact that all assessees do not necessarily have the benefit of expert legal advice but all tax administrators, it is presumed, have been sufficiently equipped by the State to ensure that the powers exercised on its behalf are responsibly exercised. The State expects the tax administrators to act fairly and competently in the performance of their fundamental and onerous duty to collect taxes on its behalf. However, it is well settled and non negotiable that the taxes so to be collected need to satisfy the touchstones of "just" and "due" taxes. The same has been laid down by the CBDT circular dated 11th April, 1955. and the same has been judicially noted and approved in many judgments and has been relied upon in support of the assessee's claim. The said circular, the CBDT observed as under:

"3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should :-

- (a) Draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;
- (b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs."

The intention of this circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or that where investigations are called for, they should not be made. Whatever the legitimate tax it must be assessed and must be collected. The purpose of this circular is merely to emphasize that we should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him."

Thus, it is evident by the above Circular that the tax authorities are not expected to encash for the State Exchequer the ignorance of the assessee. On the other hand, a duty is cast upon them i.e. to assist and aid the assessee in the matter of taxation. They are obliged to advise the assessee and guide them and not to take advantage of any error or mistake committed by the assessee out of their ignorance. The

function of the Assessing Officer is to administer the statute with solicitude for public exchequer with an inbuilt idea of fairness to taxpayers.

The honourable Supreme Court of India in the case of [COMMISSIONER OF INCOME-TAX VERSUS SHELLY PRODUCTS AND ANOTHER \[2003 \(5\) TMI 4 - SUPREME COURT\]](#), held that if the assessee has by mistake or inadvertence or on account of ignorance included in his income any amount which is exempted from payment of income tax or is not income within the contemplation of law, the assessee may bring the same to the notice of the assessing officer which, if satisfied, may grant the assessee necessary relief and refund the tax paid in excess, if any. The Bombay High Court in the case of [NIRMALA L. MEHTA VERSUS A. BALASUBRAMANIAM, COMMISSIONER OF INCOME-TAX AND OTHERS \[2004 \(4\) TMI 43 - BOMBAY HIGH COURT\]](#), held that there cannot be any estoppel against the statute, especially in view of Article 265 of the Constitution of India. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law.

### **Conclusion**

Often, we observe that decisions of District Court are reversed by the High Court which is in turn reversed by the Supreme Court. Also, many times that the Supreme Court itself may over rule or reverse its own interpretation of a particular provision. Thus for assessee to understand the law completely in its first instance without the assistance of experts and professionals is quite troublesome as there are lot of things about income tax law which he might not aware of or which may have been incorrectly understood. In the [budget speech 2020](#), our honourable Finance Minister Nirmala Sitharaman remarked that "Income Tax Act is riddled with various exemptions and deductions which make compliance by the taxpayer and administration of the Income Tax Act by the tax authorities a burdensome process. It is almost impossible for a taxpayer to comply with the Income-tax law without taking help from professionals". Also, the income tax department has put in a lot of effort to simplify tax laws for its citizens, a 'Task Force' has been constituted by the Government of India in order to draft a new direct tax law in consonance with economic needs of the country. Simplification of tax laws is the need of hour in India in order to strengthen the ease of doing business in India and in order to ensure overall uplift in the Indian economy.

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