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The Fallouts of Retrospective Amendments in Taxing Statutes: A Critical Analysis

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ABSTRACT

In the era of Information technology and globalisation almost everything is dynamic and nothing is stable. However, when it comes to the amendment of taxation laws it has always had wide implications as it has an effect upon the taxpayers and the revenue of the government. Generally, laws are amended to meet the changing needs of the society or to cope up with the new technological development or to create a new right etc. Amendment of laws can be divided into two types based upon the specified date of its application. They are prospective amendments and retrospective amendments. Retrospective amendments are made to cure any defect or mistake or loophole in a taxing statute. Generally, retrospective amendments tend to modify a vested right or imposes a new obligation upon the taxpayers with the intention to curb tax evasion and tax avoidance. However, this trend has completely changed in the recent past. Nowadays retrospective amendments are being made according to the wish of the government with the main intention of nullifying the judicial decisions thereby leading to unnecessary financial burden upon the taxpayers by digging up the past transactions and leading to a spate of litigations in the Indian courts. This paper thus, tries to critically analyse various effects or impacts of the retrospective amendment in taxing statutes.

Keywords: *Retrospective amendments and its impacts, nullifying judicial decisions, financial burden, spate of litigations.*

I. INTRODUCTION

Retrospective amendments in taxing statutes did occur from time to time for example, since the enactment of Income-tax Act² in 1961. Usually retrospective amendments are done to cure any anomalies in law or to make simple any complex procedural compliances or to deal with some court verdicts which upsets the existing law or understanding of law. In recent years a spate of retrospective amendments has been made to the direct tax laws. One common feature of most of the retrospective amendments made in the decades of 1980s and the early 1990s was that they were carried out either to cure some anomalies or to make some changes which could not,

¹ Author is an Advocate at Madras High Court, India.

² Income-tax Act, 1961, No. 43, Acts of Parliament, 1961 (India).

in all fairness, be condemned as a change of law as such but it was more like a case of parliamentary intent missing fire. Therefore, the retrospective amendments mostly led to procedural changes and the changes were mainly related to procedural matters only.

However, this trend has been distinctly changed since 2000s. This was a period in which the direct taxes particularly corporate taxes have become the largest source of revenue to the government. The retrospective amendments made during this period was not limited only to procedural aspects but extended to substantive laws as well. The retrospective amendments to such substantial provisions were made with the main aim of nullifying the judicial decisions which were made against the revenue. The sanctity of judiciary has been put in question due to such amendments. These types of retrospective amendments have also led to diverse impacts. To know the exact effect of the retrospective amendment in taxing statutes, it is important to mention the wordings of a renowned tax jurist late Shri.Nani Palkhivala criticizing the retrospective amendments made in taxation law. He criticized that retrospective amendment is a triumph of bureaucratic obstinacy over good sense. By this he means, retrospective amendments are the result of the government's stubbornness to make them win in any situation.³ In this paper the researcher has critically analysed the fallouts or the effect of retrospective amendments by referring to some of the controversial retrospective amendments made in the recent past.

II. A SPATE OF LITIGATIONS

Nowadays, retrospective amendments are being made with the intention of clearing doubts and confusions regarding the position of law or regarding the interpretation of a taxing provision. So, the possible effect should be that the taxpayers are clear about the interpretation of such provisions and all the confusions must have been disappeared. But what has happened in reality is the taxpayers are even more confused with such amendments and in most of the time they are not happy with such retrospective applications, thereby leading to challenging of such retrospective amendments in the court of law. This has led to a catena of litigations registered challenging such amendments. If we see the past, a study has shown that more than 350 retrospective amendments have been made since 1961. There are hardly few numbers of amendments against which no challenge was made. Most of these amendments have been challenged in the courts for its constitutional validity. Take for example, the first controversial

³ J N Stefanelli & L Moxham (Eds), *Do Our Tax Systems Meet Rule of Law Standards? Conference Papers 20 November 2013* (Bingham Centre Working Paper 2014/06), (Bingham Centre for the Rule of Law, BIICL, London, September 2014)

retrospective amendment made to section 80J⁴ through the Finance Act, 1980.⁵ This section was amended by insertion of Section 80J (1A) retrospectively with effect from April 1, 1972. This retrospective amendment granted tax exemption to the new industrial undertakings. It gave tax exemptions on the amount of capital employed by these new industrial undertakings. Since, the inception of this amendment there were many cases filed challenging the validity of the amendment along with the respective rule on the question that the rule was already struck down by various courts as invalid but bringing back the rule by giving a retrospective amendment is not correct. They also contended that such an amendment is opening the past transactions. One such case in which the Supreme Court gave a detailed judgment upholding the validity of the retrospective amendment in section 80J was the case of *Lohia Machines Ltd. v. Union of India*.⁶ In this case the Supreme Court upheld the validity of this retrospective amendment. However, the taxpayers were not happy with this judgment which was made in favour of revenue. They felt that this retrospective amendment has led to various repercussions on their side. It has reopened the settled matters.

One of the most controversial retrospective amendments which had led to the internationalisation of the dispute is the retrospective amendment made through Finance Act, 2012.⁷ Through this amendment the revenue authorities retrospectively taxed two giants, the Vodafone and the Cairns. They were again demanded tax by the revenue authorities even after they won the case in India in their favour. Thus, these giants took the case to the international level by challenging the retrospective taxation before the Permanent Court of Arbitration through the arbitration clauses in the Bilateral Investment Treaties entered between them.⁸

These are only few examples but there are about hundreds of cases in which the constitutional validity of retrospective amendments has been challenged. Thus, here comes a doubt why every time a retrospective amendment made by the legislature is being challenged in courts. It is because retrospective amendments are causing a new levy of tax which burdens the taxpayer. Sometimes even tax exemption provisions that are retrospectively amended have been questioned for its arbitrariness.

⁴ Income-tax Act, 1961, No. 43, Acts of Parliament, 1961 (India).

⁵ Finance Act, 1980, No. 2, Acts of Parliament, 1980 (India).

⁶ (1987) 12 ECC 75.

⁷ Finance Act, 2012, No. 23, Acts of Parliament, 2012 (India).

⁸ Anmol Mahajan, *Vodafone and Cairns – The Infamous Retrospective Taxation*, 123 TAXMANN 305 (2021).

III. OVERTURNING OF THE JUDICIAL DECISIONS

Indian Constitution did not adopt the doctrine of Separation of powers strictly unlike United States of America. The Legislature, Executive and the Judiciary are considered as the three important pillars of the Indian Democracy and they are the three important organs of the government. However, these organs do not work in isolation they are interdependent and they are backed by Checks and balances. The legislature is given the power to make or amend laws including the retrospective amendment in tax laws. However, this is not an absolute power and it is always subjected to judicial review. Thus, a court is having the power to declare a tax law which is violative of the constitution as invalid. Therefore, the courts power to declare a law as invalid is within its power of judicial review guaranteed under the Constitution of India.

The legislature's power to make retrospective amendments in taxing statutes is not disputed now. But the past trends show that the Judiciary's power of judicial review is prejudiced by the legislatures by making use of the weapon of retrospective amendment in the name of clarificatory amendments. That is the judicial decisions which upsets the existing law as against the revenue or the government are nullified by introducing a clarification provision with retrospective effect in such a manner that it is favoring the revenue or the government. The last two decades has seen a catena of retrospective amendments in taxing statutes by legislatures. Among those retrospective amendments most of them are purposefully made in such a manner that it nullifies or overturns the already declared decisions of the Courts which are against the government or revenue. If we see the past practices, it clearly shows that these types of clarificatory amendments are being made within few months from the date of pronouncement of an adverse judgment against the revenue. These amendments are usually disguised as if they are made for the sake of clarifying the law as it stands but in reality, they effectively change the position of the law as it was ruled by the courts mostly in favor of the revenue or the government.

The major impact of these retrospective clarificatory amendments in taxing statutes is that it reopens the tax liability or exemptions which were declared void by an order of the court by nullifying such judicial decisions. These kinds of amendments nullifying the effect of the judiciary have brought fear on the assesseees as a result it shatters his confidence in the law. Thus, the government should not misuse its power to make retrospective amendments for nullify a decision which was given in favor of the assessee. However, the validating laws which are genuinely enacted to cure any defect in the invalidated law are not held invalid here.

There are many instances in the past where retrospective amendments in the name of clarifications has been made to the provisions of Income-tax Act, 1961 in such a way that it overturns the effect of an earlier judicial decision rendered against the revenue. The landmark examples of such kind of amendment which had a great impact on the Indian economy would be the retrospective amendment made in section 9 through 2010 and 2012 Finance Acts. Thus, the government is exploiting its power to make retrospective amendments to circumvent the adverse effects caused by the enforcement of an adverse judicial decision. This shows that the Executive's intent more emphasised than the legislatures intent while making a retrospective amendment. Therefore, this type of retrospective amendment clearly shows that it is the executive's will that is reinforced through these retrospective amendments and not the legislatures will. Thus, it becomes very clear that the legislature is acting like a puppet for the revenue more specifically the executives in political power. This is against the very fundamental principle of separation of powers of our government. Likewise, the legislature retrospectively overriding the decision of the judiciary for the sake of the executive amounts to undermining the power of judicial review as a result the rule of law is violated. Thus, this type of retrospective amendment is hurting the basic structure of the Constitution of India. This kind of trend follows for about 10 years and this is more painful to see such amendments. This trend is highly condemned as it is undermining the credibility and faith in Judiciary. It has also caused financial burden to the taxpayers due to reopening of their past transactions These types of amendments have also caused undesirable effect on the prospective foreign and domestic investors. They were alarmed seeing such regressive retrospective amendments. Thus, owing to the confusions and uncertainties caused by these retrospective amendments, they are having lost the confidence and disinterested to invest in India. This retrospective taxation has thus caused uncertainty and instability in the Indian business environment thereby caused India to be a less investment friendly country compared to other competing countries.

IV. IMPACT ON THE ASSESSEES

The retrospective amendments often impose new obligations or takes away an already existing benefit by expanding the tax base or the incidence of tax. There are number of amendments in which the already existing rights have been taken away by enacting retrospective amendment. These types of amendments have caused unreasonable restriction upon their right to carry on business and trade. In case of individual tax payers, the retrospective amendments have taken away certain benefits which were allowed as deductions and exemptions and have resulted in opening up of already closed assessments. For example, a retrospective amendment was made to reopen the assessment under section 147 beyond a period of four years. This has caused

unnecessary financial burden and stress upon the taxpayer. However, it must be noted that these kind of amendments to substantive provisions which are unreasonable and expanding the tax base have been held invalid by various court.⁹ However, if we see major retrospective amendments, they have targeted the companies that too foreign companies rather than affecting individuals. For example, retrospective amendment to section 9, by this amendment royalty income of a non-resident assessee who had no territorial nexus with India was retrospectively taxed only because of the reason the service is utilised in India. This caused unnecessary burden upon the non-residents, who did not have any nexus in India. Thus, these retrospective amendments caused innumerable difficulties and hardships to the taxpayers.

The retrospective levy of tax has also largely affected the tax planning of the assessee thereby shattering his confidence upon the taxing system. Tax planning is the arrangement of a person's financial affairs in such a way that he could pay a lesser tax. It is normal that every assessee looks into the present applicable and plan his affairs in such a way that he can pay a lesser tax. Take for example, an assessee is planning to invest in a particular scheme keeping in mind the tax benefits he could get by doing so. But if the government makes a retrospective amendment to such provision thereby disallowing such tax benefits or if imposes any other new tax on such investment scheme then it will greatly affect the assessee's tax planning. If such types of retrospective amendments are carried out every year, then the assessee will lose his confidence upon the taxing system and he would either stop investing or he would start to evade tax by hiding such income.

The retrospective amendment has also hurted the legitimate expectation of a taxpayer. The taxpayer would have invested or entered into a transaction upon the expectation that if such an arrangement is made then it can avoid paying tax. But if the governments retrospectively levy a tax on such transaction, then it is hurting the legitimate expectation of the taxpayer. Here the taxpayer legitimately expected that he need not pay tax. But if such transaction is brought under tax by retrospectively amending the provision is against the legitimate expectation of the taxpayer.

Thus, in the outset we can come to the conclusion that retrospective tax which is said to cure anomalies or loopholes which leads to tax avoidance and evasion has actually in reality led to tax evasion. Thus, the main purposive with which retrospective amendments are made is itself defeated.

⁹Kimplas Trenton Fittings Ltd. v. Assistant Commissioner of Income Tax., (2012) 204 Taxman 63; Doshion Ltd. v. ITO., (2012) 20 taxmann.com 791; DIL Ltd. v. Assistant Commissioner of Income Tax., (2012) 205 Taxman 182.

V. IMPACT ON PROSPECTIVE FOREIGN INVESTORS

India has seen an array of retrospective amendments in taxing statutes in the recent years. If you look into these amendments most of them have targeted to impose tax retrospectively on the foreign taxpayers and foreign companies which have invested in India. These amendments have enormously distressed the investment behavior of the prospective investors. Investors feared the uncertainty which would be caused by retrospective amendments.

Generally, an investor before choosing for investing in any country will always look into the laws of the country relating to tax, investments, protection of its investments and its rights etc. and the credibility of the judiciary. Among them the first and foremost would be the certainty of tax in such country. When coming to India, the retrospective amendment in taxing statute has brought uncertainty in the taxing environment. This is because nobody will know when the government will use this power of retrospective amendment to retrospectively levy tax on a past transaction. And in various circumstances the retrospective amendment has overturned various judicial decisions which were rendered in favor of the assesseees. These types of amendments are like vandalizing the sanctity of the Judiciary. Thus, the retrospective taxation has diminished the certainty of tax laws in India and also diminished the investor's faith in judiciary.¹⁰ As a result, the foreign investors showed disinterest to invest in such an uncertain and unsafe business environment.

If we see the past amendments in the taxing statutes, the 2010 retrospective amendment of section 9 was seen has as huge mess affecting the global service providers. As per this amendment the foreign entities were taxed irrespective of their territorial nexus with India. The only condition was if they receive income for a service which is utilized in India, then the foreign entity providing such service is liable to be taxed even if does not have any territorial connection with India. This amendment caused undesirable hardship to various prospective global service providers as they felt they would be unnecessarily liable to be taxed in India simply because their service is utilized in India without having a nexus.

Likewise, the 2012 retrospective amendment of section 9(1)(i) has caused an adverse impact on the prospective global investors. It has spooked the foreign investor.¹¹ They felt that India is

¹⁰Vinod Kothari and Soma Babaria, *Retrospective amendment to taxation: Will foreign investors be scared off?*, MONEYLIFE (Mar. 17, 2012), <https://www.moneylife.in/article/retrospective-amendment-to-taxation-will-foreign-investors-be-scared-off/24316.html>.

¹¹ PRABHASH RANJAN, *INDIA'S RETROSPECTIVE TAXATION BLUNDER IS STILL EXTRACTING HEAVY COSTS*, HINDUSTHAN TIMES (JAN. 7, 2021, 07.20 AM), [HTTPS://WWW.HINDUSTANTIMES.COM/ANALYSIS/INDIA-S-RETROSPECTIVE-TAXATION-BLUNDER-IS-STILL-EXTRACTING-HEAVY-COSTS/STORY-GG6EFPCJ02UKZQDFLCKHZK.HTML](https://www.hindustantimes.com/analysis/india-s-retrospective-taxation-blunder-is-still-extracting-heavy-costs/story-GG6EFPCJ02UKZQDFLCKHZK.HTML).

not having a favourable business environment. There is also uncertainty as to the interpretation of the laws. The foreign investors were worried by the action of the government for bringing this kind of retrospective amendment. The main distress was the legislature overturning a judicial decision by making retrospective amendment. In this case, the decision of the Supreme Court in favour of the Vodafone was made ineffective by the retrospective amendment. This move of the government apparently proved that there is no respect for judiciary and the uncertainty of tax laws in India. The investors globally criticized the retrospective levy as an arbitrary imposition of tax as this amendment was made purposefully to tax Vodafone.

Thus, after this amendment the global investors did not want to invest in India. The investment in India got reduced after this retrospective amendment. Thus, the investors came to the conclusion that there is no stability or certainty in the Indian taxing system and so India is not a best option for making investments. As a result, the foreign investors have lost confidence in the Indian taxing system. All these have made the investors to think thrice before investing in India. Many foreign investors suggested that India must look at the retrospective tax disputes with an open mind and the government must change its regressive policy regarding the retrospective taxation for attracting more foreign investments. This example clearly shows that retrospective amendments have an adverse effect on the investor's opinion or belief on the Indian tax system in the long run.

VI. IMPACT ON THE REVENUE OF THE GOVERNMENT

The retrospective amendments are said to be made to curb tax avoidance which causes revenue loss to the government. Thus, retrospective amendments are made to bring those tax avoiding transactions under the tax ambit for gaining back the lost revenue. But, in reality the retrospective amendments have caused huge loss of revenue to the government. The revenue loss caused for extracting revenue through retrospective taxation is more than the loss caused by such tax escaping transactions. This is because most of the retrospective amendments lead to a series of litigations in the courts. The cost spent in the litigations and compensation to the assesses are far exceeding than the revenue loss which would have been caused if no such retrospective levy is made. Thus, in case of retrospective taxations, the cost for extraction of tax has got multiplied than the actual tax amount. This is in conflict with the Canon of Economy.

A glaring example of it would be the cost spent for the Cairn Energy's¹² and Vodafone's

¹² Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India., (PCA Case No. 2016-7).

Arbitration case.¹³ In the Cairn Energy case, India has been asked to pay around Rupees 8000 crores as damages to Cairn. Cairn has also filed an application for the enforcement of the arbitral award against Indian government. Likewise, in Vodafone case the Permanent Court of Arbitration has asked the Indian Government to pay around 40 crores as the arbitration cost. Despite the fact that India has gone for challenging these awards, still the cost involved in these litigations are very huge. The reality is, in the strive to extract revenue through retrospective taxation, India is being penny-wise and pound-foolish.

VII. IMPACT ON INDIAN ECONOMY

Foreign Direct Investments forms the most essential factor for the economic growth in India. It is the main monetary source for the growth of the Indian economy. India has witnessed increase in Foreign Direct Investment after the coming up of New Economic Policy, 1991. With the increase in Foreign Direct Investments, the Multi-National Companies rate started to grow. Thus, by 2005 Indian service sector has developed rapidly and this rapid development is due to the foreign direct investment in India. Due to these economic changes, new taxing provisions were introduced accordingly to tax the foreign companies as the significant portion of Indian revenue was from such foreign companies and their transnational transaction. The government was very keen upon the stability and certainty of the tax laws and also tried to create a public faith in the dispute resolution process as it is based on these criteria the foreign investors invest in India. Thus, the Foreign direct investment flows into a country only based on the strong governance infrastructure. This includes the laws which are existing in a country and also the mechanism for protecting the interest of the investors and rendering justice. Thus, during this period the government did not make any retrospective amendment instead they upheld the laws as declared by the court. But this trend has been changed in the recent past that is since 2007. The government did not worry about the foreign direct investments. They thought that the investments can be attracted by introducing attractive scheme like no tax etc. However, the investors were disturbed by the 2010 and 2012 amendment of the Income-tax Act.

The potential investors feared to invest in India, as they got the impression that the laws in India are not stable and certain. Such perspective was set up in the minds of the investors by witnessing the retrospective amendment in 2012. The investors came to the conclusion that the legislature is making amendments according to its whims and fancies and mainly in favour of the government and the judiciary is also being undermined by such retrospective

¹³Vodafone International Holdings BV v. India (PCA Case No. 2016-35).

amendments. This conclusion was drawn from the Vodafone case where the judiciary just gave order in favour of the Vodafone but it did not take notice of the unjust demand of the government not obeying the Supreme Court's decision. Thus, this act of the government made India an unfavourable destination for investment and business.

The result of the 2012 retrospective amendment was the following effect. The World Bank through its "Do Business report 2013" downgraded India from its 131st position in 2011 to 134th position in 2013 in its Ease of doing Business index. This index shows the Investment friendliness of a country based upon its laws relating to tax, investment protection and the integrity of the judiciary. India was positioned below Ethiopia, Yemen and Uganda. Thus, the Vodafone's and Cairn's battle with the Indian government has created a severe dent in the Foreign Direct Investments proposals to India. Thus, the retrospective taxation of these two giants had clogged foreign direct investments resulting in affecting the growth of the Indian economy. Some critics criticised that the retrospective amendment made in India through the 2012 amendment as the death of Foreign Direct Investments in India.

However, in later point of time the Indian government tried to attract foreign investments by introducing various schemes and they achieved an image of a business-friendly nation. It is important to note that in spite of covid-19 India has been the largest receiver of foreign investments. In 2020, India was committed towards its mission of Atmanirbhar Bharat that is a self-reliant India during and after Covid-pandemic.¹⁴ It was during this period, the World Bank in its Doing Business 2020 Report has appreciated India's economic reforms and India has witnessed a exorbitant growth that is from 77th position to 63rd position in the Ease of doing Business Index.¹⁵ This actually was a positive move attracting investments in India. However, the recent ruling of the Permanent Court of Arbitration against the retrospective taxation in India has greatly affected the India's integrity as a place for doing smooth business operations among the foreign investors in spite of the above improvement. And the India's recent move by challenging the Arbitral award before the Singapore high Court has further deepened the disbelief in the India's credibility of business environment. Thus, this move of the Indian government during this Covid-19 pandemic is definitely going to bear them a huge cost which would in turn affect the Indian Economic growth.

Thus, the retrospective amendments lead to uncertainties and inequity in the tax laws. This

¹⁴**Abhishek Dwivedi**, *The Unending Saga of India's Retrospective Tax Debacle*, THE DIPLOMAT, (Oct. 30, 2021, 10.50 PM), <https://thediplomat.com/2021/01/the-unending-saga-of-indias-retrospective-tax-debacle/>.

¹⁵ World Bank. 2020, *Doing Business 2020*, Washington, DC: World Bank, DOI:10.1596/978-1-4648-1440-2. License: Creative Commons Attribution CC BY 3.0 IGO

further, escalates the cost of doing business in India and it also increases the risk of doing business in India ultimately affecting the growth of the Indian Economy. Thus, the retrospective amendments have led to a significant disincentive for the prospective individuals who wished to do business in India. Here it includes both the foreign investors and the domestic investors and such disincentive is not only for one sector but generally in all sectors because of the uncertainty in laws. The above are the glaring examples to show the impact of retrospective amendments on the Indian economy.

VIII. IMPACT ON THE RULE OF LAW

In India, there is no Parliamentary Supremacy only the Constitution is Supreme. The Constitution prescribes the Rule of law which includes the Judicial Review. Thus, the parliament's actions are always subjected to the Judicial Review and this is the Rule of Law. Generally, the practice is first the executives will feel the need for the law or an amendment and submit it to the legislature. The legislature will then discuss upon the uses and effects of such law and then passes it as a valid law. This law will later be interpreted by the judiciary to test its constitutional validity, scope and reasonableness. Thus, the law declared by the judiciary is ultimate. This is the rule of law as enunciated in the Indian Constitution. This is the normal procedure in case of any law including any retrospective amendments made in a tax law. However, the previous experiences did not follow the above practice. There have been a series of instances as discussed in this paper in which the moment a judgment is delivered in favour of the assessee and against the revenue, immediate steps have been taken by the government to nullify the effect of such judicial decision by making a retrospective amendment. Thus, it clearly shows that retrospective amendments are being made with the main intention of nullifying the effect of the judicial decisions which are ordered against the revenue. This act of the legislature is abusing the power of judicial review of the judiciary. Thus, through these amendments the credibility of the judicial decisions has come to threat. This has led to loss of faith in judiciary. At large the rule of law which forms the basic structure of the Constitution is being violated through these types of retrospective amendments.

IX. CONCLUSION

After looking into the above discussion, the researcher comes to the conclusion that a retrospective amendment is generally expected to have the following effects that is it would affect an already existing contract or it will reopen the past and completed transaction thereby creating burden upon the taxpayers or it will affect the existing rights and remedies or an already existing procedure. But when we analyse the above effects, it shows that the trend has

been changed and there are many other effects these retrospective amendments are causing. One such effect is, they have been used as a weapon in the hands of the government to do whatever they want for making them win even to the extent of overturning a judicial decision. Most of the retrospective amendments are being made in the disguise of clarificatory amendments with the sole purpose of nullifying the effect of judicial decisions. Thus, these clarificatory amendments are causing an illusion as if they are made to clear the doubts but in reality, they are making invalid the effect of a judicial decision which was rendered against the revenue. Thus, the legislature by overruling the judicial decision, it is undermining the power of judicial review of judiciary for the only reason of making the executive that is revenue to win. Thus, it becomes very clear that the legislature is acting like a puppet for the revenue more specifically the executives in political power. This is against the very fundamental principle of separation of powers of our government. Therefore, retrospective legislations that overturn the effect of courts decisions fails to respect the victory of the litigant in the case. That is if a taxpayer challenges a tax liability in a court of law and if he wins in the litigation and gets orders in favor of him. Then the government cannot by imposing a retrospective amendment make ineffective or unenforceable the order which was given in favor of the taxpayer. This leads to losing of faith in the judiciary among the people.

These retrospective amendments do have negative effect upon the taxpayers and the prospective foreign and domestic investors. They often justify by saying that these amendments are done to curb tax avoidance and evasion. But the reality is there is no evidence to show that the revenue authority has recovered such sum through retrospective amendments. This is because often such retrospective levy of tax is declared as causing unreasonable restriction upon the taxpayers and thus held invalid. So, it is very clear that there is no curbing of tax avoidance or evasion due to retrospective application. Instead, the taxpayers started to evade taxes by not declaring their actual income fearing of the retrospective tax burdens. Even the companies are reluctant to show their actual income in fear of retrospective taxation. Thus, if a government really wants to curb tax avoidance it should amend and insert a more effective and concise provision prospectively and not retrospectively.

However, it is important to note that the retrospective amendments do have some positive aspects. Thus, we cannot say that there should be no retrospective amendments. If prohibition is made against retrospective amendment, then the mistakes or errors made in the legislations by the legislators cannot be correct and it would lead to miseries. Thus, when a mistake or error is found it must be corrected by giving it a retrospective effect so that even the persons who have been already suffered by such provision can be relieved. If the error is cured only

prospectively and not retrospectively, then it will be an injustice to the persons who have made past transaction. For example, if an amendment is made thereby an existing complex procedure is simplified, then such benefit must be passed to the pending proceedings also, thus in this case a retrospective amendment becomes vital.

X. SUGGESTIONS

The researcher suggests the following measures to be taken by the government to overcome the ill effects of retrospective amendments in taxing statutes:

1. Retrospective amendments in taxing statutes must be done only when it is really needed and it should be done in a manner which is benefitting the public at large.
2. A prior consultation must be made with the stakeholders before passing any retrospective amendments affecting a right of the taxpayer. This consultation shall be made by conducting surveys, interview etc. with the stakeholders at different levels. However, the consultation must be done in such a manner that it reflects the intention or consent of all categories of stake holders starting from the big giant companies, medium enterprises, individuals etc. who might get affected both in positive and negative way due to such retrospective amendment.
3. Before making any retrospective amendments there should be a careful investigation by the legislatures upon its effects or impact on the revenue of the government and the taxpayers.
4. The legislature's act of overturning the judicial decisions by way of retrospective amendments must be forbidden for gaining faith in the Judiciary. The courts must by making use of its inherent powers must Suo moto take cases relating to such retrospective amendments and declare that retrospective part alone as void as it is violating the basic structure of the Indian Constitution.
5. The revenue authorities and the legislatures must be awakened and vigilant while making a new law relating to tax in such a way that there is no need for future retrospective amendments. Because, certainty and stability form the bedrock of any good taxing system. Thus, certainties in the tax policies are the only way in which investments can be attracted in India both from domestic and foreign investors.
6. In order to protect accused persons against retrospective operation of the criminal liabilities there is an express provision under our Indian Constitution which prohibits the retrospective operation in case of penal legislations. Likewise, in order to curb the unwarranted retrospective taxation a new restrictive provision must be inserted in the Constitution of India like how it is present in few countries. This provision may be in a

restricting nature by regulating the unreasonable retrospective taxation and need not necessarily be prohibitory in nature. For example: Any law imposing new taxes or deteriorating the position of a taxpayer shall not retrospectively amended unless it is beneficial to the taxpayers. Here, retrospective amendment is not prohibited but restricted with a condition that it must be beneficial to the taxpayers.

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