

UNIT III CTPM

TAX EVASION

When a person reduces his total income by making false claims or by withholding the information regarding his real income, so that his tax liability is reduced, is known as tax evasion. Tax evasion is not only illegal but it is also immoral, anti-social and anti-national practice. Therefore, under the direct tax laws provisions have been made for imposition of heavy penalty and institution of prosecution proceedings against tax evaders.

The tax evader reduces his taxable income by one or more of the following steps :

- (1) Unrecorded sales.
- (2) Claiming bogus expenses, bad debts and losses.
- (3) Charging personal expenses as business expenses, e.g., car expenses, telephone expenses, travelling expenses, medical expenses incurred for self or family may be shown in the account books as business expenses.
- (4) Submission of bogus receipts for charitable donations for deduction u/s 80G.
- (5) Non-disclosure of capital gains on asset.
- (6) Non-disclosure of income from 'Benami transactions'.
- (7) By showing excessive or bogus salary payments to near relatives.
- (8) By not showing taxable incomes in return of income.

In brief to evade tax he suppresses or omits receipts, inflates expenses and claims bogus deductions.

Now the question is why a person evades tax? The main reasons of tax evasion are :

1. Deterioration of moral values.
2. In the society, tax evader is not a bad person. If he is rich, he is a respectable person in the society.
3. Declaration of voluntary disclosure schemes by the Government time to time. The tax evader knows that in such a scheme he can pay tax at a lower rate and save interest and penalty.
4. The tax management is not accountable for increase in tax evasion.
5. The tax management and tax experts help in tax evasion.
6. Misutilisation of public fund by the Government and its employees.
7. Imparting no education regarding the advantages of tax payment and disadvantages of tax evasion to the people.

TAX AVOIDANCE

Tax avoidance is an art of dodging tax without actually breaking the law. It is a method of reducing tax incidence by availing of certain loopholes in the law. The Royal Commission on Taxation for Canada has explained the concept of 'avoidance of tax' as under :

The expression 'Tax Avoidance' will be used to describe every attempt by legal means to prevent or reduce tax liability which would otherwise be incurred, by taking advantage of some provision or lack of provision in the law. It excludes fraud, concealment or other illegal measures.

In other words, 'tax avoidance' is a device which technically satisfies the requirement of the law but in fact it is not in accordance with the legislative intent.

Per Jagadisan J. [in *Aruna Group of Estates vs. State of Madras* (1965) 55 ITR 642 (Mad.)], "Avoidance of tax is not tax evasion and it carries no ignominy with it, for it is a sound law and; certainly, not bad morality, for anybody to so arrange his affairs as to reduce the brunt of taxation to a minimum."

However, now the Supreme Court is of the view that the colourable devices to avoid tax should not be encouraged and this is the duty of the court to expose the persons who avoid tax and refuse to approve such practice because the social evils of tax avoidance are manifold, and may be summarised as under :

- (a) substantial loss of much needed public revenue, particularly in a welfare state like ours;
- (b) serious disturbance caused to the economy of the country by piling up of mountains of black money directly causing inflation;
- (c) large hidden loss to the community by some of the best brains in the country being involved in the perpetual war waged between tax avoider and his expert team of advisers, lawyers and accountants on one side, and Tax Officer and perhaps not so skilful advisers on the other side;
- (d) sense of injustice and inequality which tax avoidance arouses in the breasts of those who are unwilling or unable to profit by it;
- (e) ethics (or lack of it) of transferring the burden of tax liability to the shoulders of the guideless, good citizens from those of artful dodgers.

[*McDowell & Co. Ltd. vs. Commercial Tax Officer* (1985) 154 ITR 148]

The legislature has inserted the provisions in direct tax laws for checking tax avoidance. But so long there are loopholes in the laws, tax avoidance cannot be checked by the Courts. The function of judiciary in India is clearly not legislative, its role lies in interpreting the law made by the legislature.