

**ANATOMISATION OF PLAUSIBLE NEED FOR DIRECT TAX CODE IN INDIA
THROUGH SCRUTINY OF FALLACIES IN INDIAN TAX LAWS AND RULES**

***PUSHPIT SINGH¹**

Chapter 1

1.1 INTRODUCTION

Jitendra Solanki, a SEBI registered tax and investment expert said, “Tax relief to corporates, simplification of the tax code on multiple fronts, reducing litigation and a faster disputes settlement mechanism are crucial reforms the industry and taxpayers are looking forward to”.

The Income Tax Act, 1961 is a heavy act referring to more than 800 sections that are highly susceptible to ambiguity in terms of interpretation and practice leading to an increased scope for non-compliance with Tax laws and inability to comprehend the complicated jargon and technicalities of a self-contradicting Act. Furthermore, the Income Tax Act, 1961 is vulnerable to amendments through the Finance Act of every fiscal year. Considering the current scenario of the Income Tax Act, 1961 which leads to unstable Tax-GDP ratio due to unsatisfactory amount of money in the hands of individual taxpayers and companies in India, lower equity, higher compliance costs and administrative burdens, higher litigation costs and lower facilitation of Tax Avoidance and erosion of the Tax Base due to higher plausibility of Tax Evasion, the first Draft of the Direct Tax Code (DTC) Bill was introduced in Parliament in 2010 . The then-Government formed a Standing Committee of Finance (SFC) to deliberate the Direct Taxes Code Bill among specialized individuals and groups. A report was submitted to the Parliament in 2012 but

¹ B.B.A L.L.B, 1st Year - 2019-24 Batch

the Direct Tax Code Bill lapsed when the National Democratic Alliance came to power in 2014. However, in 2017, Narendra Modi -led Government formed a Task Force to draft a New Direct Tax Code Bill. A report was submitted to the Finance Minister of India, Nirmala Sitharaman, which is yet to be made public. The purpose of this Research Paper is to deal with the idea of enhancing India's Direct Tax Structure by keeping in mind the highly volatile Indian business environment and businesses grappling in an economic downturn and nullifying the effect of well-established jurisprudence for the existing legislations. This research paper is of quintessence importance as it analyses the onerous Income Tax Act, 1961 by comparing it to other legislations and narrowing it down to the possibility of a probable Direct Tax Code comprising of simplified tax related provisions in India. This importance is in direct correlation with the applicability of the results as they are practical in nature that can be scrutinized and considered by the concerned Legislative Bodies.

1.2 Literature Review

Yale University's Professor of Law, Deborah L. Rhode said, "*Too much Law, Too Little Justice; Too Much Rhetoric, Too Little Reform*". Income Tax Act, 1961 is the literal translation of the aforesaid quote as it contains provisions that are contradictory in nature and consist of far too many laws that are strenuous to interpret leading to yearly amendments. Possibility of Direct Tax Code Bill was raised in the past, but it failed miserably; Currently, a draft of the Direct Tax Code was prepared by a special committee that is yet to be made public. This research paper seeks the possibility of a Direct Tax Code in India with a view to enhance the legislative, definitional and interpretative challenges with respect to Taxation Laws in India.

1.3 Research Objectives

The researcher aims to fulfil the following objectives for this research paper:

A. To analyze the fallacies in Indian Tax Laws and Rules;

- B. To explore the pros and cons of a Direct Tax Code from the perspective of an Individual and Companies in India by critically comparing it to the existing provisions.

1.4 Research Questions

In the light of the above-mentioned objectives the researcher dealt with the following questions in the research :

- A. What is the fallacy in Indian Tax Laws and Rules?
- B. What are the pros and cons of a Direct Tax Code from the perspective of an Individual in India by critically comparing it to the existing provisions?
- C. What are the pros and cons of a Direct Tax Code from the perspective of Companies in India by critically comparing it to the existing provisions?

1.5 Research Methodology

There are mainly doctrinal and non-doctrinal methods of study for conducting research work . Doctrinal method mainly gives emphasis to conducting research by analysis of materials available in the library whereas non-doctrinal research requires researcher to undergo field work to do the research work . Doctrinal method is found to be the most suitable for the present study since the research involves analysing the laws, legislations, and recommendations and suggestions given by committees related to Taxation Laws in India.

1.6 Chapterisation

This whole is divided into 4 chapters :

Chapter 1 – Introduction

This chapter gives a detailed insight into the background of the bulky Income Tax Act, 1961 and Direct Tax Code . Besides, the chapter enumerates the research questions, narrates the objectives and explains the significance of the study . The chapter also chalk out the methodology adopted, scope of the study and Chapterisation .

Chapter 2 - Critical analysis and interpretation of Income Tax Act, 1961

This chapter gives a detailed insight into the background of the bulky Income Tax Act, 1961 by enlisting the multiple provisions that are contradictory and unfair in nature. It also compares the provisions of the old Direct Tax Code Bill, and the stipulated provisions that would be proposed in the new Direct Tax Code by analyzing it with the Income Tax Act, 1961 .

Chapter 3 - Conclusion and Recommendations

The 3rd chapter being the last chapter summarizes the entire work, and enumerates the recommendations derived from the research .

Chapter 2

CRITICAL ANALYSIS AND INTERPRETATION OF INCOME TAX ACT, 1961

2.1 Terms of Reference

The terms of reference put forth by the Task Force formed in 2017 are narrow in nature. The current terms of reference cover only examination of the Income Tax Act , 2017 and to suggest changes for ease of doing business and compliance in law. Thus, the outcome would be an amended Income Tax Act ; there will be no Direct Tax Code which defeats the purpose of the Task Force of 2017 wherein simplifying the language of the Income Tax Act, 1961 was one of its objectives. This seems far from being possible as the amendment of the complete Income Tax Act , 1961 is impractical and unfeasible².

The Income Tax Act , 1961³ refers to “98 Central Acts, various State Legislations and more than 800 Sections, Rules, Notifications and Various Case Laws of the Apex Court, High Courts, Appellate Tribunals and Authorities for Advance Rulings”. Therefore, it may

² The Institute of Cost Accountants of India, *Suggestions and Submissions in upcoming New Direct Tax Law* , (20 1 8).

³ Income Tax Act, 1961, No . 2, Acts of Parliament (India) .

not be practically possible and feasible for a Task Force to submit its report of changes and suggestion to the Central Government within a span of 6 months by considering the bulkiness of the Income Tax Act, 1961. However, this report was submitted to the current Finance Minister, Nirmala Sitharaman, in August 2019 which is yet to be made public. This extra time and efforts invested are again defeated majorly because scrutiny of an act as bulky as the Income Tax Act, 1961 is ideally supposed to take more than 2 years. For example, “*If a business is illegal, neither the profits earned nor the losses incurred would be enforceable in law: but that does not take the profits out of the taxing statute*”; Allowing of Depreciation under Section 32 of the Income Tax Act, 1961⁴; Rejection of an Accounting Method with valid evidence and exercised with caution; all these conundrums of national importance in India took more than 2 years of deliberation both in the Parliament and Judiciary. Any haste displayed in the matter of deliberation of the Income Tax Act, 1961 would prove to be a bane for the Indian Economy as this act heavily dictates the Indian Taxation System⁵.

2.2 Assessing Officer

A suggestion made in the Chelliah committee report was with respect to the accountability of the Assessing Officer in the kinds of Assessments they make. The suggestion was as follows : “*The Assessing Officer should be made accountable for their actions by being blamed for raising demands which are not upheld by a reasonable figure, say 50 per cent, the officer should be given a black mark and also reprimanded. On the other hand, the Assessing Officer must be protected and defended if he has observed instruction of the Board and followed the court rulings even though audit might raise objections about his actions*”. Regular requests have been made to incorporate such provisions but there seems to be no light at the end of the tunnel due to such requests not being acted upon. The Bombay High Court held that the Officers are not following the judgments of Jurisdictional High Court and Tribunals. The court also held that if such an

⁴ Income Tax Act, 1961 section 32, No . 2, Acts of Parliament (India) .

⁵ *supra* note 1.

interpretation is not to be followed by the Assessing Officers, it shall lead to a death in the Rule of Law in India⁶.

A Taxpayer may be awarded the position of no-taxation or low rate of taxation by the respective court or tribunal. However, considering the non-accountability of Assessing Officers, these officers may have contested the aforementioned positions in the higher Court of Law. By Contesting such a judgment in Higher Courts, the Assessing officer may disregard the Court Ruling and will make a demand for payment of tax that puts the taxpayer at a disadvantaged position⁷.

2.3 Challenges faced during Litigation

The honest taxpayers are finding it a tedious task to get the refund due to them with respect to time and in total (with due interest). Rectification applications are not disposed off in time; Appeal effects are not provided; Even after payment of taxes, Tax Deductible at Source is not reflected appropriately leading to a continuum of harassment to the honest taxpayers. It is only the rich assessee who can afford to go to the High Court for appeal; the small assessee is at the mercy of the Tax Administration to get the refund, justice and any other relevant remedy. The Central Board of Direct Taxation in 1955 released a circular regarding dealing with refunds and reliefs. The circular stated that “the officers should guide the assessee and if any claim which is rightfully due to the assessee is not claimed in return, it must be allowed to the assessee. The Circular has not been seen in application⁸.

The pendency of tax matters before the Courts is alarming. Appeals filed take nearly 4 to 5 years for High Courts to come up for admission. Once admitted in the High Court, it takes another 10 years for them to come up for final hearing and disposal. For example, presently, the Bombay High Court is taking up the matters which were filed in the year 2015 for admission, and for final hearing matters which were admitted in 2002. It takes more than 2 to 3 years to get an order from the CIT(A) and another 2 years from the

⁶ *supra* note 1.

⁷ *supra* note 1.

⁸ *supra* note 1.

Appellate Tribunal . If the matters are taken to the Apex Court, another 5 years might be consumed before the matter comes for hearing. Thus, in India, Tax Litigation takes nearly 20 years to attain finality⁹ .

2.4 Tax Deductible at Source

2.4.1 Rates and Source

Presently, there are more than 25 sections that require the assessee to deduct Tax at Source and file a Tax Return . Failure to do so will lead to 30% of the payment not being qualified as deduction. Furthermore, the threat of prosecution, and liability to pay interest and penalty looms as even if there is a delay in filing of tax return or deducting tax at source.

In Mumbai, more than 300 cases of prosecution have been launched in the year 2018 . It is astonishing to note that the prosecution notice is issued for a few days delay on filing of return though the taxes along with interest were paid¹⁰ .

2.4.2 TDS Certificates

Issuing of Tax Deductible at Source Certificates involves extra time, efforts and costs which are unnecessary in nature due to the fulfilment of the fact of existing data already available with the concerned parties. In the same scenario, No-Issue of Certificate leads to attraction of a penalty¹¹ .

2.5 Compliance

It has been observed that in multiple scenarios, the assessee has been unable to identify whether a certain transaction would attract tax liability; whether the expenditure would be revenue or capital; whether the said amount will be allowed as deduction, etc . Only Non-Resident Assesseees are provided with a facility of Advance Ruling . This mechanism answers queries and provides clarification regarding the proposed or existing transactions .

⁹ *supra* note 1 .

¹⁰ *supra* note 1.

¹¹ *supra* note 1.

The Resident Assessee are not being provided with such a facility that would possibly improve the compliance system drastically¹².

2.6 Composition of Tax Settlement Commission

A Tax Settlement Commission, a quasi-judicial body, was set up under Section 245B¹³ of Income Tax Act, 1961 with the objective of settling the tax liabilities in complicated cases to avoid endless and prolonged litigation, and subsequent strain on the resources of the Income Tax Department. However, the composition of such a Tax Settlement Commission is questionable as it comprises of only the Chairman, Vice-Chairman and Members who “*shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, problems relating to direct taxes and business accounts*”. This is highly flawed as it does not define who will be the persons expert in direct taxes and business accounts by giving arbitrary power to the Central Government to appoint any person who is having special knowledge in the aforesaid field thereby making the composition and constitution of the Commission as vague. Scope for professionals like Chartered Accountants, Cost Management Accountants, etc to join the Commission is highly reduced due to the vague definitions as presented above. The possibility of Legal Professionals, specialising in Taxation Laws, joining the commission is of a ‘grey area’ nature. Furthermore, this also leads to high centralisation of power which defeats the purpose of our decentralised Taxation System¹⁴.

2.7 Tax Laws

Several amendments and updation of Tax laws have reaped little to no results. For instance, exemption from capital gains under Sections 54¹⁵, 54F¹⁶, 54EC¹⁷ or 54B¹⁸ of the Income Tax Act, 1961 is allowed only when an assessee reinvests the capital gain in specified assets. However, assessee are often denied such exemption if the new asset is

¹² *supra* note 1.

¹³ Income Tax Act, 1961 section 245B, No. 2, Acts of Parliament (India).

¹⁴ *supra* note 1.

¹⁵ Income Tax Act, 1961 section 54, No. 2, Acts of Parliament (India).

¹⁶ Income Tax Act, 1961 section 54F, No. 2, Acts of Parliament (India).

¹⁷ Income Tax Act, 1961 section 54EC, No. 2, Acts of Parliament (India).

¹⁸ Income Tax Act, 1961 section 54B, No. 2, Acts of Parliament (India).

purchased in the name of their close relative. There exists this grey area in the Income Tax Act, 1961 which leads to the possibility of litigation¹⁹. There is high level uncertainty with respect to residents who travel abroad regularly. Specifically for internationally mobile employees, there is massive levels of ambiguity surrounding matters of taxation of stock award, taxation of overseas social security, availing of tax treaty benefit at the time of tax withholding, etc²⁰. Section 47 of Income Tax Act, 1961²¹ renders mergers or amalgamations wherein the resultant company is Indian as tax neutral. This does not facilitate cross border mergers of amalgamations thereby reducing the scope of growth of business²². Section 56 (2) was introduced in the Income Tax Act, 1961²³ to curb tax avoidance practises undertaken by companies restructuring. But it has created a lot of hardship and obstacles in genuine corporate restructuring. Also Section 56 (2) (x)²⁴ needs to be reconsidered for genuine restructuring situations. Section 72²⁵ and 73²⁶ of the Income Tax Act, 1961 must be aligned to ease out the conundrums faced in business restructuring and amalgamation process with respect to carrying forward of business loss²⁷. In case of handicapped person, nature has already been unkind to them. More consideration can be possibly shown, and their subsidy or exemption shall be increased. Individuals suffering from disabilities are allowed certain income tax benefits. Section 80U and Section 80DD of the Income Tax Act, 1961²⁸ provide tax benefits to individuals and their family members with disabilities. An individual suffering from disability gets tax benefit under Section 80U²⁹, while an individual gets tax benefits under Section 80DD if any dependent family member of the individuals suffering from a disability. Section 80U provides deduction to an individual who is a resident of India during the year and is suffering from physical disability as specified under this section. Deduction under section

¹⁹ *supra* note 1.

²⁰ *supra* note 1.

²¹ Income Tax Act, 1961 section 47, No. 2, Acts of Parliament (India).

²² *supra* note 1.

²³ Income Tax Act, 1961 section 56 (2), No. 2, Acts of Parliament (India).

²⁴ Income Tax Act, 1961 section 56 (2) (x), No. 2, Acts of Parliament (India).

²⁵ Income Tax Act, 1961 section 72, No. 2, Acts of Parliament (India).

²⁶ Income Tax Act, 1961 section 73, No. 2, Acts of Parliament (India).

²⁷ *supra* note 1.

²⁸ Income Tax Act, 1961 section 80DD, No. 2, Acts of Parliament (India).

²⁹ Income Tax Act, 1961 section 80U, No. 2, Acts of Parliament (India).

80U is not available to NRIs . However, a foreign citizen who is a resident in India during the financial year for which deduction is to be claimed is eligible under this section . For deciding the quantum of deduction, individuals with disability are categorized into two types depending upon the percentage of severability of diseases:

- Person with 40% or more disability: If an individual is suffering with at least 40% of a disability, then he is eligible for a deduction of Rs 75,000;
- Person with 80% or more (severe) disability: If an individual is suffering with 80% or more disability, then he is eligible for a deduction of Rs.1,25,000 .

Another issue is that specific disabilities like Low vision, Leprosy-cured, Hearing impairment etc, which are covered under this section, were defined in ‘The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act,1995’ .

However, the same has been repealed by the newly-enacted law, i.e. ‘The Rights of Persons with Disabilities Act, 2016’ w.e.f. 28.12.2016 . However, those diseases have not been recognized in the Income Tax Act . So, the advantage in real sense may not be provided to the deprived persons³⁰ .

2.8 Corporate Tax

Currently, India imposes 25% corporate tax on small companies up to Rs 400 crore in revenue, 30% on large domestic companies above Rs 400 crore in revenue and 40% on foreign firms with a 4% health and education surcharge on total tax payments. Besides, there's a surcharge of 12% for domestic companies and 5% for foreign companies that boast a taxable income of over Rs 10 crore . This is one of the highest Corporate Tax Rates in the world. Such a high Corporate Tax Rate has been cited as a thorn or obstacle to private investment and growth in India . On July 5 2019, while presenting Budget 2019, Nirmala Sitharaman, Finance Minister of India, had announced that companies with annual turnover up to Rs 400 crore will be taxed at the lower rate of 25% as a step towards phased reduction in corporate tax rates . With this move, 99.3 per cent industries are already covered by the lower corporate tax rate. However, foreign companies may still have to pay branch profits tax on the amount repatriated to their foreign partners The proposed

³⁰ *supra* note 1.

corporate tax reduction will apply to both large local as well as foreign companies that are present in India without a subsidiary and are taxed at 40% . Unlike domestic firms, foreign companies pay a higher corporate tax rate, but do not have to pay Dividend Distribution Tax that is applicable to domestic companies . If implemented, Indian Economy would see a gradual and sharp rise in the economic downturn it faces and will help to prove Krishna Memani's comment on the Indian Economy - "Politics can wait, but the economy cannot" - false³¹ .

2.9 Dividend Distribution Tax (DDT)

Dividend Distribution Tax (DDT) is the tax that is deducted from the dividend that is to be paid to a company's investor . The fund house deducts the DDT before making such payment to the investors. This tax is deducted before the payment is made to the shareholders. DDT makes aggregate dividend income less than Rs. 10 lakhs per annum tax free, i.e. no income tax would be applicable on it. For aggregate dividend incomes exceeding Rs 10 lakhs per annum, 10% income tax is applicable. DDT is also applicable on mutual funds: 10% of DDT, 12% surcharge and 4% cess adding it up to 11.648% for Equity Oriented Mutual Funds, and 25% of DDT, 12% surcharge and 4% cess adding it up to 29.12% on Debt Oriented Mutual Funds. Mutual Funds are proving to be catalysts and growth drivers in the field of investment and capital building. Small and Middle Income groups, and Senior Citizens are receding from Mutual Funds as a source of income due to the practical double taxation, with high interest rates with a possibility of Income Tax being levied, DDT leads to. Furthermore, out of the aforementioned shareholders, certain shareholders are also required to pay tax on the dividend earned by them . This is done to apparently curb the unnecessary benefit that is conferred upon them . DDT is proposed to be done away with, and lead to dividend being taxed only at the hands of the shareholders. It is because such a dividend is taxed at 3 basic levels as Corporate Tax, Dividend Distribution Tax and finally at the investor level which makes the Indian Economy

³¹ *supra* note 1.

unattractive for huge investments and denies potential improvement in the capital formation market³².

2.10 Minimum Alternate Tax (MAT)

Owing to certain times wherein a taxpayer, being a company, has generated revenue but by using provisions of Income Tax Act, 1961, it avoids tax liability or reduces the tax liability through exemptions, deductions, depreciation, etc. . In order to curb this and avoid the increase of Zero-Tax Paying companies, Minimum Alternate Tax (MAT) was introduced which is calculated at 18.5% on the book profit or at the usual corporate rates, whichever is higher is payable as tax. Both Domestic and Foreign Companies and non-corporate entities fall under the provision of MAT³³.

2.11 New Tax Slabs

Frequent changes in the tax slabs render an obstacle or hurdle to the taxpayer.

Existing		Proposed	
Tax Rate	Income	Tax Rate	Income
30% + 37% Surcharge	Above Rs. 5 crore	35%	Above Rs. 2 crore
30% + 25% Surcharge	Above Rs. 2 crore		
30% + 15% Surcharge	Above Rs. 1 crore	“30%”	Rs. 20 lakhs – Rs. 2 crore
30% + 10% Surcharge	Above Rs. 50 lakhs	20%	Rs. 10 lakhs – Rs. 20 lakhs
30%	Above Rs. 10 lakhs		
20%	Rs. 5 – 10 lakhs	10%	Rs. 2.5 lakh – Rs. 10 lakhs
5%	Rs. 2.5 – 5 lakhs		
No Tax	Up to Rs. 2.5 lakhs	No Tax	Up to Rs. 2.5 lakhs

As per official government reports and statement by experts, the task force has retained tax exemption up to income level of Rs. 2.5 lakhs. For Senior Citizens (Above 60 years), the

³² *supra* note 1.

³³ *supra* note 1.

tax exemption remains at income level of Rs. 3 lakhs, and for very Senior Citizens, the tax exemption remains at income level of Rs. 5 lakhs . Major change would be in the change of the Income Tax Slabs. 10% Income Tax slab might include income up to the level of Rs. 10 lakhs which will bring a major relief to a heavy chunk of tax payers . According to the Central Board of Direct Taxes (CBDT), more than 27% of the 5.52 crore individual taxpayers who filed returns for 2017-18 had an income between Rs. 5 lakhs and Rs. 10 lakhs . If the aforementioned recommendations are applied, 1.47 crore taxpayers would move from the 20% slab to the 10% slab . The impact of this will not be significant for low income tax payers . Middle income tax payers will get slight benefit . Someone with a net taxable income of Rs. 7 lakhs per annum would not see major relief as the tax reduces from Rs. 44,200 to Rs. 40,000, the drop being less than 10% under the proposed new tax slabs . However, the tax relief would be major for a person who earns Rs. 10 lakhs wherein the tax reduces from Rs. 1.06 lakhs to Rs. 70,000, the tax reduction being approximately 34% under the proposed new tax slabs . The taskforce has retained full tax rebate as offered under Section 87A of Income Tax Act, 1961³⁴ to taxpayers earning up to Rs. 5 lakhs a year . The higher income groups would benefit further . A person with a net taxable income of Rs. 22 lakhs would see his tax liability go from Rs. 4.75 lakh to Rs. 3 lakhs making it a reduction of 36% under the proposed new tax slabs . A new slab of 35% is also introduced for incomes above Rs. 2 crores . If you consider the highest effective tax rate for incomes between Rs. 2 crore and Rs. 5 crores including surcharge and cess, it brings it up to a total of 39% . This will lead to the increase in disposable income that will in return aid the consumption within the economy³⁵ .

2.12 Eradication of Surcharge

The then Finance Minister, P. Chidambaram, introduced 10% surcharge on income of over Rs. 1 crore in 2013 as a temporary measure . He said, “I am confident that when I ask the relatively prosperous to bear a small burden for one year, just one year, they will do so cheerfully”. However, such a surcharge on tax became a permanent feature in the subsequent budgets of the subsequent years which was continued to be hiked for every

³⁴ Income Tax Act, 1961 section 87A, No. 2, Acts of Parliament (India).

³⁵ *supra* note 1.

income slab . This hike means that a tax payer with a net taxable income of Rs. 6 crore pays approximately Rs. 2.53 crore as tax or approximately 42% of his income in tax . As per CBDT data, there were 2,850 taxpayers reporting an income of above Rs. 5 crore in 2017-18 that were heavily hit by hike in surcharge³⁶ .

2.13 Income Computation and Disclosure Standards (ICDS)

2016-17 was the first year when Income Computation and Disclosure Standards (ICDS) was applicable . The tax payers faced multiple challenges in reporting the impact of ICDS in Corporate Tax . The Delhi High Court also struck down several provisions of the ICDS, and amplified and clarified various aspects of Income Computation. Section 47³⁷ of the Income Tax Act, 1961³⁸ .

2.14 General Anti-Avoidance Rule (GAAR)

GAAR was introduced in the Income Tax Act, 1961 in 2017 . The objective behind GAAR is to prevent and penalise unhealthy tax avoidance schemes . However, there is a common apprehension that it may lead to fresh rounds of litigation . To further substantiate, the tax administration released FAQs to clarify the perceptions about GAAR .

This is inadequate as what is the need of the hour are detailed guidelines and illustrative examples explaining GAAR³⁹ .

³⁶ *supra* note 1.

³⁷ Income Tax Act, 1961 section 47, No. 2, Acts of Parliament (India).

³⁸ *supra* note 1.

³⁹ *supra* note 1.

Chapter 3

CONCLUSION AND RECOMMENDATIONS

3.1 Conclusion

The drafting of a new direct tax law for our Country requires members from different backgrounds who can think about the progress and vision of the country at least for another five decades or so . The law should be drafted in such a manner so that it spells out the objects behind the responsibility and duties expected of the taxpayers . The Committee should prepare a draft report and publish it for public appreciation and comments . The draft law should be widely circulated for suggestions and such suggestions have to be carefully considered before the draft gets finalised . There should be a reasonable time before a draft law or amendment is suggested and the enactment of such law⁴⁰ .

3.2 Suggestions

- a. Formulation of a Direct Tax Code should take more than 2 years' worth of deliberation and discussion through the aid of industry experts and professionals like Chartered Accountants, Chartered Secretaries, etc.
- b. The accountability provision and suggestion by the Chelliah Committee for Assessing Officer should be considered.
- c. Fast Track Courts and E-Bench can be considered to reduce the pendency of tax-related cases in India.
- d. Provision of TDS Certificate should be done away with due to the efforts and resources taken up by them.
- e. Advance Ruling Authority should be established for the resident Assessees. A separate authority can be set up that will facilitate this function. Similar provisions exist in Maharashtra with respect to Value Added Tax (VAT) that can act as guiding force.

⁴⁰ *supra* note 1.

- f. Ministry of Finance should work in collaboration with Minister of Law and Justice in order to figure out and chalk out the strategy to overcome the pendency of tax litigation in India, and increase its effectiveness and efficiency by instating stricter safeguards at the executory level.
- g. An ideal Settlement Commission should comprise of one representative from the revenue and one each from the legal and the accountancy professions like CMAs ,CAs . The Members may be selected by inviting applications and following the due process of interviews in a transparent manner . There has to be a minimum term of five years for serving as a member of the Settlement Commission . The scope of the Settlement Commission maybe broadened wherein a once in a life time opportunity maybe given to an assessee who comes before the Settlement and voluntarily pays the taxes .
- h. With the introduction of Ind-AS in India which brings in the best practices in the financial reporting standards, the published Financial Reports represents all necessary disclosures as needed by all the stakeholders, a further introduction of standards for taxation would only complicate the entire issue and make the assessment proceedings extremely complicated and subjective . Instead of applying a separate tax standard/ICDS, the requirement for disclosure and tax treatment thereof in respect of each category of income and expenditure should be embedded within the relevant provisions of the statute itself.
- i. Revisiting of Section 47 of the Income Tax Act with respect to Cross-Border Mergers or Amalgamations .
- j. Applicability of GAAR provision should be deferred for 5 years.
- k. Use of Artificial Intelligence in Tax Compliance and Administration Process.
- l. Settlement of disputes through mediation between the Tax payer and a Collegium of Commissioners in order to avoid tax litigation.