

Syllabus

Taxation Laws I

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Introduction.

Taxation laws is important part of curriculum and need to be studied thoroughly as to understand the nuances. With tax laws integrally connected with Constitutional Law and Corporate Law, it becomes all the more important to have an idea about the taxation laws so as to excel in Corporate law practice. Independently too, litigation as well as Corporate side of the subject is very wide and gives students a solid grounding so as to choose tax as a career option when they pass out of law school.

The syllabus has been designed keeping in mind the requirement of students and to make them familiar with important principles , the foundation on which a broader base can be built in future. The syllabus takes care of familiarising students with basic constitutional principles applicable in context of taxation laws , the principles related to income and its application, theory of residence in case of companies and individuals, the principle of place of effective management, agricultural income and its exemption from taxation, basic principles relating to taxable income and international taxation. The topics have been covered in such a way so as to give the students a fairly basic idea about taxation .

Objective of the Course:

1. To understand the basic principles of taxation.
2. To enhance the knowledge of tax jurisprudence.
3. To learn the latest development in tax jurisprudence, nationally and internationally.
4. To build logical reasoning for resolving the tax problems.

Module I.

Basic principles of Constitutional Law in context of taxation.

This module covers the basic constitutional principles as applicable to taxation laws like the various lists in the Seventh Schedule, Difference between taxation entries and general entries, distribution of taxation powers between the Union and the States etc. This is primary designed to make students aware of the Constitutional basis of taxation.

Module II.

Principles related to application and diversion of income.

This module covers the basic principle of taxation that only the real income accruing to a tax payer is to be taxed. If the income is diverted and does not accrue to the tax payer, then such income cannot form part of taxable income. Therefore the distinction between application and diversion of income becomes important for determining the taxable income of the assessee.

Module III.

Agricultural Income and its exemption from taxation.

This module covers in detail the agricultural income and its exemption from taxation. Since agriculture income is exempt for taxation then determination of issues like what constitutes agricultural income, under what circumstances it may be exempted etc. become important.

Module IV.

Scope of Total Income.

The tax liability of a resident and non resident is evaluated on the basis of principles incorporated in Section 5 of the Income Tax Act. This section basically deals with the scope of total income and how this is applied to arrive at the income tax liability of various entities.

Module V

Principles of Residence and its implication on tax liability.

Determination of residence of a tax payer is important because it changes the tax liability of tax payer varies on his status of being a resident or a non residents. In this context it becomes important to have knowledge about the principles which generally applied to determine the residence of a tax payer.

Module VI.

Place of Effective Management and its implication on tax liability.

Place of Effective Management is a new concept which has been added to Section 6 of the Income Tax Act to overcome the difficulties in determining the residence of corporations. Since the earlier provision related to artificial persons like Companies, firms, Associations of Persons etc was being taken advantage of by Multi National Corporations to evade or avoid tax in India, therefore the principles related to Place of Effective Management was incorporated in tax laws to tackle the issue of evasion and avoidance of tax by Companies.

Module VII.

Heads of Income.

This module covers the sources of income and its taxability. The heads from which the income can be derived is divided into five heads. These heads are mutually exclusive and the source from which the income is computed for taxation has unique methods of computation. Though the tax is levied on total income accruing to an assessee , but the income is computed strictly according to the particular method of computation falling under that particular head and relevant sections. The principles which are generally applicable to compute income under various heads are subject matter of discussion.

Module IX.

Salary Income and Income from House Property.

This module covers the basic principles applicable to computation of salary income and income from house property. When a salary income may be treated as business income and vice versa, when a tax on house property may be levied in context of ownership or possession of the property.

Module X.

Income from Business, Capital gains etc.

Personal Expenditure v. Business Expenditure; Income from distinct and separate business; Perquisites and Fringe Benefit Tax; Transfer under Capital Gain; Full value consideration .

This module covers the various principles which may be applied for computing income from Business Income and capital gains. This module also covers the basic principles applicable to taxation of such incomes and exemptions granted to tax payer.

Module XI.

International Taxation.

With cross border transactions increasing due to liberalisation , the issue of taxing international transactions has come to the forefront. Earlier with lax attitude towards cross border transactions, various devices were used by companies and individuals to evade tax which was due in India. This often resulted in formation of overseas trusts , creating branches or subsidiaries of Indian Companies in overseas tax heavens to avoid legitimately due taxation in India. However with various norms coming into existence , these practices are now increasingly under scanner of tax authorities.

The aim of this module is to make students aware of various principles which may be applied to tax these transactions which were hitherto untaxable. The topics covered under the module include understanding the principles related to Permanent Establishments, Transfer Pricing etc.

Suggested Readings.

Income Tax. Kanga and Palkivala.

Principles of Income Tax. Singhania and Singhania. Taxmann Publications. Income Tax Law- Chaturvedi & Pithsaria's

Laws of income tax- Sampath Tyengar'Consise Commentary on Income Tax- Girish Ahuja & Dr Ravi Gupta

The Law & Practice of Income Tax – Dinesh Vyas

Suggested Cases for Study.

Cases for Direct Taxation

1. CIT v/s G.R.Karthikeyam [(1993)201 ITR 866 (S.C.)]
2. CIT v/s British India Corporation Ltd [(1987)165 ITR 57 (S.C)]
3. ITO v/s Barendra Prasad Roy [(1981)129 ITR 295 (S.C.)]
4. CIT v/s Navnit Lal Sakar Lal [(2000)113 Taxman 692 (S.C)]
5. Mukherjee Estate (p)Ltd v/s CIT [(2000)244 ITR 1]
6. Sakney Steel & Press work Ltd v/s. CIT [(1997)228 ITR 253 (S.C)]
7. Mysore Minerals Ltd v/s CIT [(1999)239 ITR 775 (S.C)]
8. Shakti Trading company v/s CIT [(2001)250 ITR 775 (S.C)]
9. Travancore Rubber & Tea Co. Ltd v/s CIT [(2001)109 Taxman 250 (S.C)]
10. Gowli Buddanna v/s CIT [(1966)60 ITR 293 (S.C)]
11. CIT v/s Dr.V.Gopinathan [(2001)248 ITR 449 (S.C)]

12. Synco Industries Ltd v/s Assessing officer, Income Tax, Mumbai [(2008) 168 Taxman 224 (S.C)]
13. Kerala Road Lines v/s Commissioner of Income Tax, Cochin [(2008) 168 Taxman 308 (S.C)]
14. Commissioner of Income Tax, Chennai v/s Bilahari Investments [(2008) 215 CTR (Mad) 208]
15. Deputy Commissioner of Income Tax, Ahmedabad v/s Core Health Care Ltd. [(2008) 298 ITR 194 (S.C)]
16. K.C.C. Software Ltd & Ors v/s Director of Income Tax [MANU/SC/0821/2008]
17. Commissioner of Income Tax, Bangalore v/s Infosys Technologies Ltd [MANU/SC/0495/2008]
18. Honda Seil Power product Ltd v/s Commissioner of Income Tax, Delhi [(2007) 12 SCC 596].
19. U.P. Forest corporation v/s Dy. Commissioner of Income Tax, Lucknow [(2007) 14 SCC 610].
20. CIT v/s Gujrat Maritime Board [MANU/SC/8188/2007].
21. CIT v/s Willamson Financial Services [(2007) 165 Taxman 638 (S.C)].
22. Union of India v. Azadi Bachao Andolan [(2003) 263 ITR 706 (S.C)].
23. McDowell & Co. Ltd v. CTO [(1985) 154 ITR 148]

Apart from the cases mentioned , other case laws will be discussed in the class ans will be supplied for reading.