

Income -Tax Bill, 2025 : An Insight into the Income -Tax Bill, 2025.

Date : 11-4-2025 (Friday)

Subject : An Overview of Income -Tax Bill, 2025, - Concept of Income, Charge of Income -Tax, Scope of total income, income deemed to accrue or arise in India and heads of Income. (Chapter IV- Part A Clauses 13 & 14) :

Speaker : Mr. Arvind P. Datar, Senior Advocate, Madras High Court.



<https://youtu.be/8o5falZr4mQ?si=rKSVXx1UvzNgChU>

Summary of the speech prepared by CA. Rajesh Mehta, former Secretary General AIFTP and CA. Apurva Mehta from Online lecture of Respected Mr. Arvind P. Datar, Senior Advocate, Chennai.

Executive summary.

Mr. Samir Jani National President of the All India Federation of Tax Practitioners (AIFTP), welcomed the **Senior Advocate Mr. Arvind P Datar**, and all participants on zoom and youtube.

Mr. Samir Jani expressed thanks to the Past Presidents present in this virtual meeting, he expressed thanks and gratitude for humble support for this online lecture series by respected **Senior Advocate Dr. K. Shivaram**

sir and Chairman Direct Tax Committee **Senior Advocate Tushar Hemani**, Gujarat.

Introduction of speaker by Senior Advocate Tushar Hemani:- Mr. Arvind P. Datar, a cost accountant and a lawyer, was designated as a Senior Advocate in the year 2000, he is a director of Nani Palkhivala Arbitration Centre and a trustee in Palkhivala Foundation, he's a governing council member of National Judicial Academy Bhopal and Vice President of Bar Association of India. He is very passionate about teaching, he has taught at almost all the National level institutions including all the National law schools, Cambridge University of Cape Town South Africa. He was a visiting faculty in the Institute of Cost Accountant and Institute of Chartered Accountant of India's various branches. He has also many publications to his credit, **Kanga & Palkhivala's "The Law and Practice of Income Tax" (Eleventh Edition, 2020)** which has been updated by Mr Arvind P. Datar. Many landmark judgments and **Madras Bar Association v. UOI 2014 (10 SCC 1)** where he fought tooth and nail against the Government for introduction of National Tax Tribunal Act, 2005, and ultimately today we all of us are practicing before the respective High Courts and that is thanks to Mr. Arvind P. Datar because otherwise we would have been practicing the tax laws before the National Tax Tribunal. He was a part of **Supreme Court Advocates -on -Record Association v. UOI (2016) 5 SCC 1** (NJAC case) wherein NJAC system the way in which Government wanted to affect the appointment of the judges, this is a judgment where we still have the collegium system and post judgment Mr. Datar was also part of the two member committee which recommended changes for elevation of judges to High Courts and supreme court. In just preceding lecture there was reference to **Justice K. S. Puttaswamy v. UOI AIR 2015 SC 3081/ 2017) 10 SCC 1** judgment in a context of challenge to the Income tax search, in fact now we have someone who argued Puttaswamy's case, so he was also part of the team which argued Puttaswamy's case and made the Right to Privacy a fundamental right in India.

Subject : Overview of Income -Tax Bill, 2025, - Concept of Income, Charge of Income -Tax, Scope of total income, income deemed to accrue or arise in India and heads of Income. (Chapter IV- Part A Clauses 13 & 14) :

Speaker: Mr. Arvind P. Datar, Senior Advocate, Chennai.

1. Was there need of new Income -Tax Bill?

The learned speaker Mr. Arvind P. Datar stated that, On 23rd July 2024 the Honourable Finance Minister announced that there'll be a comprehensive review of the Income -Tax law, he stated he was hoping that there will not be a new Act, he thought they could perhaps amend the existing Act and that would be more helpful to us because we have lived with the Income-tax Act now for almost 65 years. We know the provisions and actually there was no need to have a completely new law in the sense it is not a new law.

2. What is new in the Income -Tax Bill 2025?

It is just a rephrased and a redrafted law simplified, all the provisos have been eliminated, explanations eliminated and it is put in a more format like say for example ironing out the creases and making it, but there is no substantial change.

3. Teach to learn:-

Mr. Arvind P. Datar stated that, I was after passing out of law college, he was teaching in almost all the institutes at that time for a young lawyer without any briefs, writing articles and income from lectures was the main source of income.

I can honestly say and I tell all my young friends if ever you get a chance to be a faculty member in any institute please grab the opportunity, I taught Contract Law, Commercial Law at ICW institute, at Company Secretaries Institute and I taught taxation in Chartered Accountants institute, in both

for inter and final and I can honestly say that what I learnt of taxation was only when I started teaching, when I had to read all the sections, read all the judgments, so that I can answer the questions and I made it a point not to refer to any note while teaching so I had to go the extra mile, be completely sure of what I was doing.

4. Fight against establishment of National Tax Tribunal and NCLT:-

About NCLT and NTT, yes National Tax Tribunal, unfortunately I did not succeed fully in the National Company Law Tribunal, I tried to explain to the Supreme Court that there is no Company law Tribunal anywhere in the world the basis of Tribunals is where it's between the State and the individual if it's a list between two private parties then it is a function which only the judiciary can undertake but the Supreme Court did not accept that view, they said no, it is a supplement to the law and today you have situation where no court no civil court deals with company law the sad part is a person will become a Supreme Court judge he'll become a high court judge become a Supreme Court judge until he reaches the Supreme Court he'll never see the Companies Act, because everything is done through the Tribunals and by all accounts it's not a very happy experiment they introduced the National Tax Tribunal also and now that I'm mentioning, I go down memory lane in 2005 they issued an ordinance to start the National Taxation Tribunal, they introduced an ordinance and when I challenged the ordinance they initially Justice R. Subhash Reddy did not give a stay in the Madras High Court then it so happened that they put an advertisement that the members of the Tribunal, Vice President, President has to be High Court Judges and the application form said that the High court judge has to apply with his passport size photograph and his school leaving certificate BA degree certificate LLB certificate and all that so I took a copy of that and I at lunchtime I mentioned to the Chief justice I said look this is what they're doing they want High court judges to apply with passport photographs and so on, he posted the matter next day and gave

a stay that's how the ordinance got stayed and ultimately it came before the Supreme Court, you will notice that Madras bar association was decided on NCLT was decided in 2010 and if you see the last paragraph I argued NCLT and NTT both put together it was a retirement of justice K. G. Balakrishnan so they said we deciding only NCLT and since National Taxation Tribunal is a Tribunal under the constitution under 323B, we will decide it later so they de tagged the NTT despite hearing arguments on both and NTT then was ultimately decided four years later to my good luck it came after Justice Rohinton Fali Nariman, became the Supreme Court judge and it is his concurring judgment which is really lays down the correct law and I had argued at that time since all of you are here argued that look the decision on substantial questions of law, interpretation of the law is an essential judicial function and on the principle of separation of powers the Tribunal can decide facts it can also interpret law but the ultimate decision on substantial questions of law can never be by the Tribunal and I quoted number of judgment which were not unfortunately it was just justice Ravindran in the company law case he said no these are not relevant but in the National Tax Tribunal all the judgments were elaborately discussed particularly by Justice Nariman.

I'll tell all the interested readers, in Canada there was a huge areas of rent control cases so there's a green commission by Mr Green he said let's create rent control Tribunals headed by quasi-judicial people and we can quickly dispose of cases by a seven judge bench they went into what is judicial function what is the role of courts what's the role of Tribunals and they said that if there are too many cases then the solution is to create more courts and not shift it to Tribunals and ultimately he said that look he struck it down and fortunately for that today High courts have the jurisdiction to decide tax cases Otherwise you would have some National Tax Tribunal Benches everywhere and so on and going by NCLT it may not have been the happy experience.

5. Income Tax Bill – Simplification?:-

The Income -Tax Bill of 2025, one thing about the Income -Tax Bill, now is it supposed to be an Act to simplify the provision? Yes, there is simplification, the language is easier to read, there is no doubt about it.

What is the impact of that Definition section which is almost identical to the definition there in the 1961 Act, it's substantially the same. Tax year again similar to chapter 2 of the income Tax- Act 1961 both chapter 1 and chapter 2 are the same here.

One problem which I find in the New Bill is they have not eliminated the controversial topics. I thought if they want to do for simplification, all the contentious issues could have been sorted out and it could have been assessee friendly.

Today it is just an Act in a new form and except for simplification of the English in substance, there is no change at all, all the complexities continue. How do I say that, now just take charitable purpose, I appeared in the **ACIT v. Ahmedabad Urban Development Authority [2022] 449 ITR 1 / [2023] 291 Taxman 11 (SC)** case for the Institute of Chartered Accountants which in my humble opinion is an erroneous judgment, has caused serious problems to charitable institutions luckily Chartered Accountant Institute was not affected except to say that if they sell their forms etc at a price it will be profiting but for today's purpose the definition of charitable purpose is in 2(15) of the 1961 Act it is now clause 2(23) and the GPU i.e. of general public utility is in the proviso to 2(15) that has become part and parcel of 2(23) but in simplification they have added general public utility with all charitable objects then I was wondering where is the proviso gone you find that it is in clause 346 there is a complete provision for charitable trusts and what they call non profit organizations so these conditions are in clause 346 now we had made a memorandum to the Finance minister to say that the proviso to 2(15) it's creating lot of problems on the ground. A charitable trust which is in the GPU category like a Chartered Accountant Institute or a Chamber of commerce or even for that matters I don't know if AFTP is a charitable trust it's a general public

utility now it said that not more than 20% of your receipts can be from commercial activity so 80% should be from donations, in reality this is virtually impossible because I know many organizations in Tamil Nadu, in Maharashtra where they have got some assets like they may have an Auditorium they may have a hall which is let out and the income therefrom is used for supplying for doing charity so what we had suggested was, don't have this 20-80 rule, let the Trust earn 100% also from commercial activity and commercial is not doing business just passively renting your hall or say for example suppose for destitute women I have an organization which makes Agarbatti or Papad or something like, that the income from that will be used to support those ladies, that's a commercial activity so we said as long as 85% of the income is applied for charitable purposes it should not be affected that has not been changed it continues as it is.

6. Explanations merged in sub-sections:-

Now this kind of explanation (merged into sub-sections) according to me is really not an explanation, not a simplification. Take demerger, if you go to 2(19AA) of the 1961 Act we all have seen it all of us who practice know it's 2(19AA) it had six explanations as to what is the meaning of undertaking, what is liability, and so on, now what they have done in clause 2(35) instead of the explanation they have simply put, "where", just put, "where", and then below, "where", there's 1, 2, 3, 4, 5, 6 which is explanation 1 to 6 that's all. I don't know what is this and the fourth explanation which is a proviso i.e. proportionate liabilities will be deducted is now $N = K \times L/N$, so throughout the Act wherever there is a proviso which says in proportion to or in proportion to etc that has become into a mathematical formula so this is the way it is now S. 2(19AA), is the same thing instead of putting as an explanation they have simply put, "where"- 1,2,3, 4, 5, 6, now by putting, "where", what do you mean? Are you explaining it or are you saying that with reference to? We don't know they could have simply kept the same explanations and as I explained later, provisos & explanations have a definite meaning in a statute, you can't simply eliminate them, but I'll come

to that later. Now, "winnings from lottery", I've just gone through the provisions while preparing for this lecture now in winnings for lotteries 2(24)(ix), is the 1961 Act there is an explanation which explains what's the meaning of lottery, what's the meaning of card game, explanation says what's the meaning of lottery and what's the meaning of card games, explanation-1, explanation-2, now this has been deleted, now they have defined by putting, "where".

7. Explanations renamed as, "where":-

How do you then deal with this section by deleting the explanation? So in some cases they have made explanation as subsections or put, "where". But this deletion may create a complication because in the new act can you rely on the old explanation?

8. Subsidy : Real income?:-

There is another problem which, it's a live issue now pending in the supreme court, "subsidies", the Supreme Court held that if it is a capital subsidy, it is given to put up a new plant, a new factory, to create a profit making apparatus, it is capital in nature, it can't be taxed. Justice Kapadia Judgment in case of **CIT, Madras v. Ponni Sugars & Chemicals Ltd [2008] 174 Taxman 87 / 306 ITR 392 / 219 CTR 105 (SC)** is very clear he applies the principal purpose test, the main purpose test, if the main purpose is to create the capital asset then it's a capital subsidy not taxable, But if it is for running of your business, suppose they give you some incentive, production incentive then it is interesting point so if it's a revenue for running the business or based on your profits etc you get some extra incentive it is revenue subsidy, so the law is well settled. The first judgment was in 1922 in a dry dog case from Scotland and that law has and consistently followed. Now what they did in 2016, in this subsidy, if you see the definition, "subsidy includes", it makes every receipt taxable including waiver, concession, it is sued, gross. That I got a case for a part for a client which was in Bombay High Court but unfortunately they rejected

it, but Supreme Court has issued notice on the definition. Even if I get a subsidy in cash, that's one thing now in many cases whether it is Tamil Nadu or Maharashtra they give you if you go to backward area and if you invest there the conditions are there you must invest 500 crores or you must put 300 crores you must generate so many jobs if you do all these conditions, you will get sales tax subsidy, you'll get electricity duty subsidy, you'll also get 50% waiver of stamp duty, schemes are there. Now this definition says the value of any kind of concession you receive by whatever name called will be taxable. Therefore you had a case where a person had gone to a backward area put up a large plant and any concession any reimbursement is taxed as a subsidy. So what they do is, if you invest 500 crores that 500 crores will be you can recover it in 25 years either through the subsidies or by refund of money and so on. Now the purpose of the subsidy is to put up a new plant employing at least 700 people in the Maharashtra scheme, so I challenged and I said look you can't treat this as income. Suppose I buy land and instead of 1 cr stamp duty they levy me 50 lakhs I have never got 50 lakhs but that 50 lakhs is taken as my income and 39% or 40% is paid as tax and we showed that, even income which we never got, like waivers and concessions, electricity duty, I need not pay for 5 years, that waiver is taken as my income, so I said that what ultimately went to the Supreme Court was, I said look State Governments with their meagre resources, difficult financial condition they are giving money for setting up industry, if this subsidy again is 40% taken by the central government then what is the logic so we showed that out of subsidies of 300 crores almost 126 crores were taken as tax so this is the provision and this will when I deal with the definition of income you'll understand that I took the plea that for under the definition of income Unless it is really income it has the nature of income you have no legislative competence. It is unconstitutional to tax something which can never be treated as income by any stretch of imagination. I think all of us will agree that, if you put up an industry or suppose you're a chartered accountant or a lawyer and they say that look if you decide to practice in a district court,

you'll get waiver of the bar council fees can you say that that waiver is your income ? That's as absurd as this is.

9. Need of Tax Year in place of Assessment Year?:-

A new definition tax year. All these years, last from the day of my being a raw junior, we have been using the word previous year, financial year mean previous year, Assessment year AY 22-23 AY 1985-86 now assessment year is concerned to history hereafter we will not use the word assessment year. The FAQ says that this was creating confusion.

Mr. Arvind P. Datar stated that, with great respect I don't think it was creating confusion. We are completely used to having a previous year and having an assessment year. We all used to it but they say that it is international tax practices to use it over taxes. We'll get used to it, not a very big issue. Now I really don't know what is the purpose except to say that it is international practice. What was the harm in continuing this way ? I don't know, but they have done it. Now just to tell all the viewers that tax year is defined as 12 months of the financial year beginning on 1st April. The word financial year is not defined in the income tax bill. It is defined for your information in section 3. Clause 21 of the general clause act and financial year means a year commencing on 1st April that's the mean so financial year is defined in the general clause act and that has been clarified in the FAQ.

10. Charge of Income -Tax, business connection:-

Now if you go to chapter two you'll find that section 4 and 5 and 6 are same sections in the 1961. We know section 4 is Charge of Income- Tax, section 5 is Scope of total income, section 6 is Residence, same thing continues so the provisions are the same.

Now sec. 9A certain activities to constitute business connection that is not there maybe it has been merged so earlier you had section 4 to 9B now

you have section 4 to 8 so here you have four to 10 so seven sections are there, earlier you had nine sections this is the difference now.

You may note that all the concepts, we learned revenue – capital. What is capital expenditure, revenue expenditure, capital receipt, revenue receipt, nature of income everything remains the same. Heads of income are the same, house property is there minor changes of course but there is no change in the overall structure of the Act you have salaries, house property, capital gains, profits and gains of business, other sources everything is the same. Only thing is lot of portions have been shifted to schedules and other changes have been made particularly explanations and provisos but otherwise overall the thing is the same. So like these three criminal laws, which they changed section 132 IPC is now 150 that The Bhartiya Nyaya Sanhita, 2023. Whatever it is, so just renumbering of sections like 2(24) is now 2(49) similar sections have been changed, one good thing is all the principles are unchanged.

11. Problems being faced in GST law- interpretation, judicial precedents:-

I'll flag one danger which I am facing in GST cases. As all of you know the GST is in a sense merger or they use the word subsume instead of having multiple central taxes and multiple state taxes the concept of GST is one nation one tax so seven or nine indirect taxes were all merged. Sales tax was the state law became part of this main GST, excise central became GST, so many laws entry tax, over all these were state plus centre all subsume one. Earlier the sales tax paid could not be adjusted against excise duty payable there's no interchangeable credit but now all credit is pulled together so all the inputs whatever they suffer on supply of inputs you'll get the credit on the output at least theoretically the problem we are facing now is this many words in GST are the same. Input tax credit was there before it's input tax credit classification the customs classification excise classification has been borrowed by GST tariff so what is beverages what is fruit juice what is auto parts what is various items are the same in GST

despite that the officers are issuing notices at random saying the early judgment won't apply because the law has changed so I have suggested that the savings and repeal should make it abundantly clear that whatever are the judgments on the word is the same whatever are the judgments should be taken to be complied with should be followed by the officers because we're having a practical problem they are saying no. This new law we have to again state it and again in all the cases high court has granted stay but it's unnecessary expense for the client if the issue is completely concluded in classification. Say for example one case whether chocolate milk is milk or is it a beverage, supreme court has said chocolate milk is just 3% extra chocolate it continues to be milk it is just a flavoured milk so it's a milk product and not a beverage, so that is the dispute they said no it's an old judgment it's under the old law we will not follow it. Same again controversy continues for fruit juice and other things so this is one point which has to be clarified now as a student of law I don't after so many years also every day is a learning experience.

12. Deemed income and income:-

One passage which is often missed out is in **Navnitlal C. Javeri v. K. K. Sen AAC (1965) 56 ITR 198 (SC)** it is just two lines in the judgment of Justice P.B. Gajendra Gadkar, I'm using this in that subsidy case also.

In the constitution entry 82 of list one of the seventh schedule it says taxes on income, now what is income is not defined in the constitution. Justice Chagla in **Navinchandra Mafatlal v. CIT (1955) 27 ITR 245 (Bom)(HC) (Affirmed in CIT v. Navinchandra Mafatlal (1961) 42 ITR 53(SC)**

in the early 50s he said legislative entry should be given the widest possible income so income must be interpreted widely capital gain also part of income. Similarly entry 49 list is land and buildings now Supreme Court in **Mineral Area Development Authority and another v. Steel Authority of India and Another (2024) 10SCC 1** has said that land has to be interpreted widely similarly buildings so land can be interest in land all will

be covered in land, tax on land and buildings can be now Supreme Court has said if you can levy tax on lands if that land has minerals then based on the value of minerals you can levy tax that's also got because land includes land plus things below the land that's the wider definition of land so tax on income is the widest possible mean so capital gain is included Section 56 deemed income, all is taken because income is given the widest possible meaning but there is one very important observation and I'll request all of you to read this judgment what justice Gajendra Gadkar says for a five judge bench he says even if income has the widest possible meaning parliament cannot tax an item which is not rationally capable of being considered as income it's very important so even though parliament has the widest latitude the widest scope for expanding giving legal fiction by putting, "income includes", this shall be deemed to be income and so on it cannot rationally be capable of considered as income and that's why the Supreme Court admitted our case in the subsidy matter I said how can a waiver of stamp duty considered as my income, electricity duties not paid by me i.e. waived for promoting industry how can a waiver of duty which I have never received how can it be considered as my income. I can understand a capital subsidy you make as income at least the money has come in, but no money has come in, an item, a liability is waived or a liability is reduced that can't be considered as my income, the other judgement which I recommend everybody to see again is **Godhra Electricity Co. Ltd v. CIT (1997) 225 ITR 746/139 CTR 564/91 Taxman 351 (SC)** where it's again a very important judgment where the company generating electricity had increased the rates so when they were charging say 2 rupees per unit they have made it 3 rupees, please note that there was a stay by a civil court that you can't charge 3 rupees, so they continued to charge 2 rupees but in the books they entered as 3 rupees so the mercantile book entry was 3 rupees per unit but actual receipt was only 2 rupees, because of the state they couldn't collect it, Supreme Court went into the point and said that just because you make a book entry it's not enough to saddle the liability. Could the company have recovered

three rupees ? Answer was No. They could not have recovered three rupees during those assessment years and therefore you can't tax them on some amount which they could have never income and there they refer to real income and please also apart from Godhra Electricity Co Ltd (Supra 0 please read **Poona electricity supply Co Ltd v. CIT (1965) 57 ITR 521 (SC)** which is cited in that case where they say income in the constitution, income in the Act, must mean real income, the legal fiction can be created for tax evasion or to treat items which are actually have the character of income and they are trying to escape tax but the principle both in **Navnitlal C. Javeri v. K. K. Sen AAC (1965) 56 ITR 198 (SC)** is that the receipt should be capable of being rationally called that is a common sense a normal person can say yes this money coming in is income but **Godhra Electricity Co. Ltd v. CIT (1997) 225 ITR 746/139 CTR 564/91 Taxman 351 (SC)** held that income should be real income it should be capable of being realized probable of being realized something which you can't realize because of a stay order can never be your income and finally this is a case which is missed out I accidentally located it in by when arguing a case in Hyderabad very nice judgment by Mr. Justice R. K. Agarwal, **Addl. CIT v. Bharat V. Patel (2018) 404 ITR 37/ 165 DTR 218/ 302 CTR 110 / 255 Taxman 324 (SC)**, I wanted to highlight a very important point which the Supreme Court has laid down what we talk of income tax we say income is a receipt so whatever I receive is taxable please observe carefully the Supreme Court lays down, it's a fundamental principle, only those receipts which are taxable can be called as income. Only those receipts which are taxable can be called as quote unquote income. Say for example if I gift my daughter 50,000 rupees on her birthday it's a receipt in her hands but since that is not taxable money paid to a relative is not taxable, it is not income so it is not that whatever is income is taxable. First there is a receipt, the money comes in, that receipt becomes taxable only then it is income. It's a very important distinction you have to read that line carefully and get it absorbed to say that only those receipts which are taxable are really income so when you talk of

income tax Act that income which is taxed is a receipt which is taxable the distinction is very important.

13. Source of income in India: Vodafone judgment :

In **Vodafone International Holdings B.V. v. UOI (2012) 341 ITR 1/204 Taxman 408/247 CTR 1/66 DTR 265/6 SCC 613/Vol. 42 Tax L R 305 (SC)** as all of you know the facts of Vodafone, it was basically Hutchinson Max then it became SR Max this was a company which over the years in 7- 8 years they purchased 23 licenses all over India so they had 23 telecom licenses operating in India they had a complete infrastructure, phones mobile phones subscriptions everything else all the business was in India but the shareholding or at least more than 52% was owned by Mauritius companies which were owned by further companies which were owned by further companies so father grandfather great-grandfather etc and ultimate holding company was one share of a Cayman Island company just one share which at that time was valued at 11 billion or 44,000 cr that time dollar was 44 rupees the argument of the department was look all the assets are in India business is carried on in India so though it's a Cayman Island share and what happened there the Hong Kong company sold it to Vodafone so it was a sale between one non-resident to another non-resident money is paid outside India share was outside India and Supreme Court held that since a share is different and the underlying assets are different, sale of a share outside India will not be attracted to Indian tax, they amended the law retrospectively and what did they say, suppose it's a Japanese share, companies in Japan let's say Suzuki, but if the value of the Suzuki share is derived from assets in India, suppose Most of the assets of Suzuki are with Mauritius, I'm just giving you an example then though the company is in Japan the shares shall be deemed to be in India so transfer of Suzuki shares will be transfer of assets located in India by legal fiction so what they said was wherever there is a non-resident company whose assets are located in India substantial value is derived from the assets located in India that is the company's value is based on assets

located in India substantially though the company's registered office is in UK Scotland Cayman Islands wherever it is, it will be an Indian company and if those shares are sold even between two non-residents it will attract Indian capital gains tax or Indian tax and Sec. 9(1)(i) now under new 9, 9A they have made an amendment now the underlying assets can be tangible and intangible assets located in India that may lead to some problem first of all what's the location of an intangible asset there is a lot of Jurisprudence on where is the situs of the intangible asset because intangible assets includes patent, trademarks, designs, commercial rights all are intangible assets that's been defined in section 32 of the 1961 act now where are the commercial assets where are the intangible assets located that is going to be a problem because there are judgment which say the location of intangible assets there are certain rules, which could again lead to a problem because the department will now say that look your commercial rights are in India and therefore the shares are valued, therefore the shares are deemed to be Indian shares and liable to tax that's one problem I wanted to highlight. The second problem is on royalty, under the current definition if I'm an Indian resident I'm a resident taxpayer I pay royalty to a foreign company then that foreign company has to be liable to Indian tax they overruled the old judgment of **Caborandum Universal Ltd. v. ACIT (2021) 283 Taxman 312 (Mad.)(HC)** which said that if the agreement is entered into abroad then even if the technology is used in India it's not liable to tax that was the old judgment that was reversed in 1976 and said if a resident pays to a non-resident it's taxed, they went further if a non-resident pays to another non-resident for use of any right property information but the income is generated from India then you'll be taxed in India so the last part is important the source rule still applied both are non-residents you know in international taxation it's either residence or source so even if residence is outside India if the source is in India, India gets the right to tax that royalty income now a very draconian amendment which could lead to serious issues that source in India has become source outside India in the new definition the danger which I see is it is non-resident or

non-resident so two people will be sitting in Germany, if the right property information is India I can understand suppose two people are in Germany and they sell shares but the right property information that is trademark patent etc is in India it's okay then they can there's some agreement that is a nexus with India, to tax it the law says both will be outside India the right property information need not be in India but why extra territorial operation because both can be non-resident the right that is the assets right, property, information, intangible asset need not in India, the source also need not be in India, yet India wants to tax him. I don't know how it is going to work out if there are two people in Germany or Germany and England the right property is also outside India the income also is not from India where is the question of tax so I don't know how they are going to actually apply it and this may lead to some complications and article 245 of the constitution says a law can have extra territorial operation but please note there is a difference between extra territorial operation and extra territorial legislation supreme Court has said extra territorial operation is permitted that is Indian law can operate abroad provided there's a nexus with India but if there's no nexus with India it is called extra territorial legislation which India can't do, my humble opinion is that this particular section is dangerous i would like all of you also to think about it how can we tax something where the people are not in India source is not in India property is not in India yet section 9 says it is income deemed to accrue or arise in India.

14. Deletion of Explanations and Provisos: Rise to litigation?:-

The last serious problem by the deletion of explanations and provisos. A case where the entire law of explanations and provisos was discussed you can make a note it is **S. Sundram Pillai v. V.R. Pattabiraman volume one of 1985 1 SCC page 591 or equivalent is AIR 1985 SC 582** this judgment beautifully explains analyzes the whole law and says what is a proviso and summarizes the conclusion this is meaning of proviso so proviso is basically an exception to the main section then they go on to explain

what is an explanation they go into details and they say when an explanation clarifies when an explanation is a substantive law all those things are discussed, so in law a proviso has a definite meaning, an explanation has a definite meaning and there is one more judgment **Thota Sesharathamma And Anr v. Thota Manikyamma (Dead) by LRS and Ors, 1991 4 SCC 312**, it's the only section which discuss what is the proviso and the sub-section, so now what has happened is the proviso is an exception to the main rule you say that gift of money to one person to other is an income from other source, provided that where the money is given by a person to his relative it will not be taxed so there is an exception so general giving of a gift without consideration or giving property without consideration is a gift it is income from other sources but if I give it to my daughter my son my relative as defined in the act it's not taxable it's a proviso, now here what they've done is they've made all provisos into subsections now when the next case comes what do we say this subsection is an exception or do we say it's part of the main section, that's going to be a controversy, and I wonder when the next budget comes are they going to add subsections or they going to add provisos, they're going to add provisos then what is the big purpose or are they going to eliminate provisos forever we don't know. Yes explanations now as I told you in the definition of demerger all explanations have become they put, "where", and put 1 2 3 4 5 6 you could have put the same explanation because explanation actually meant to clarify.

There is some word, "undertaking demerge", is a demerged undertaking what is undertaking explanation says for the purpose of this clause undertaking means like this for the purpose of this subsection liability means this is just like it's a definition clause within a definition clause to clarify what it is but now you put everything into one thing the other difficulty which when I used to teach I used to tell people see there are three types of provisos there is a basic proviso there is provided further, So you'll have proviso, provided further, provided further, so like 10(23C) had something like 24 provisos now you have provided further is also used the

word provided also what is the distinction between provided, provided further and provided also, the law says, take phrase on legislation or any book on drafting, after the subsection or the section the proviso will be the first exception if I use provided further it will be the second exception if I use provided further it'll be the third exception you'll have provided further, further, further, now provided also is very important suppose there's word provided and then I put the word provided also, provided also is the exception to the earlier proviso so suppose there is first proviso and I put provided also the provided also is an exception to this proviso suppose there is provided, there is provided further and now there is provided also so this provided also is an exception to be provided further so any provided also is an exception to the exception that is the structure of the act now here they put everything into subsections so I don't know how the courts are going to interpret it because you have a section you have an exception you have an exception to an exception now everything is put into one bucket of subsections

I hope there is no complication but this was uncalled for in my opinion, because these are all legislative devices which have stood the test of time for more than 100 years and that ought not to have been changed.

15. Repeal and Savings:-

One major difficulty one major problem is going to be the savings clause which says that all the old provisions will continue so this law will come into force on 1-4-2026 hopefully then the new act operates that up to 1-4-2026 all the old provisions will continue to apply assessment, reassessment everything will be continue to apply there are some other parts on repeal savings, it's my only prayer is that all the old judgments all the old rulings whether Tribunal High Court on interpretation should be followed we should not subject the assesses to fresh litigation all over again.

16. Compare Act and Bill ! :-

Now all of us have to apply our minds and keeping this income tax bill in one hand and keep the income tax act in the other and keep on comparing, there's a comma, here a full stop, there and so on.

Vote of Thanks by AIFTP Secretary General Santosh Gupta:-

Mr. Santosh Gupta Honorary Secretary General of AIFTP extended vote of thanks and expressed heartfelt gratitude to respected Arvind Datar, sir senior advocate for taking time out of his immensely busy schedule to share his deep insight on such a vital topic.

Disclaimer :

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Mr. Rajesh Mehta (Former Secretary General AIFTP)

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