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TAX PLANNING ADVANTAGES FOR INDIAN CORPORATES: STRATEGIES UNDER INCOME TAX ACT-1961

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Abstract:- Past studies have shown that corporate tax have significant impact on dividend policy, industrial growth, FDI inflows, capital structure etc. so if this tax structure can be simplified and tax burden can be reduced then a significant amount of savings can be allocated towards industrial growth. The present study discusses the taxation of Indian corporates under the law. Also the study makes comparison between tax planning, tax avoidance and tax evasion. The present paper discusses the various tax planning strategies available under income tax act 1961. The paper concludes that if a corporate can properly use the available resources then tax liability can be significantly reduced.

Keywords: Corporate taxation, Tax Planning .

INTRODUCTION :

Regardless to say that corporate taxation has attracted vital attention of policy makers around the world. Generally Tax means a compulsory payment paid by any assesse under any act relating to taxation. Tax is the major source of income for Government of India. The amount collected by the Govt. in the form of tax is utilized in social welfare expenses. Corporate tax is the tax paid by the corporates in any manner under the law. Such corporate tax has wider impact on both micro and macro-economicvariables. These variable includes dividend policy, capital structure, new investment, economic growth etc. So taxation is considered is vital instrument in infrastructure and economic development of any country. So the Government always try to collect more taxes so that it can be spend for public welfare. In other hand, there is long run debate going on between the government and the tax payer regarding the payment of tax. The tax payer are always unwilling to pay more tax. In this process tax payer try to minimize the tax burden by using some colorful devices that is legally wrong. Such type of practices by the company is illegal and punishable under law. So while making tax planning the company has to be careful and make proper use of available tax benefit avenues under the act to minimize the tax burden.

So it is clear that tax system may affect the growth of any corporate as well as economy. Higher tax rates prevailing in any economy discourages the new investment and fails to attract FDI to the country.

In order to maintain a balance between these the tax policy always provides sufficient opportunity to make proper tax planning and reduce the tax burden, so that such savings may be invested for betterment of such corporates and ultimately it will enhance the economic growth of the country. Without any proper planning if any corporate intentionally making falsification of income statement or use of any colorable devices is socially undesirable and punishable.

The present paper discusses the taxation of corporates in India and some provisions of Income tax Act 1961 applicable to Indian corporates. In light of aforementioned objective the present study discusses the various tax planning strategy available in Indian tax system, which can be judiciously used to minimize the tax burden of any assessee.

LITERATURE REVIEW:

The tax system is always considered as a complex one especially in India. The complexity nature and dynamic impact on the other factors of corporate tax has attracted many researchers in academic and policy making body. Past research shows there are many studies which have studied the impact of corporate taxation on many macro and micro economic variables. Such economic variables includes dividend policy, share repurchase, economic growth, FDI etc. As compared to other the company specific variables have attracted much more attention of researchers. Some of the studies in past have discussed bellows:

Like Brittain (1964) have studied the income tax rate of corporate and its impact on dividend policy. The study found a relationship between structure of tax system and corporate profit. The study argue that the tax structure may influence the corporate profit thus dividend.

In another study Leroy(2008) has discuss the dividend policy of the company, in this contextthe study showed the impact of capital tax and dividend tax on the dividend payout by the company.

Uwuigbe1 and Olusegun (2013) has studied the impact of taxation on dividend policy of corporate of Nigeria, their study concludes that there is a significant positive relationship between this two. And any change in taxation rate will significantly affect the dividend policy of the company.

Hungerford(2013) have studied the relation between the corporate tax rate and economic growth after 1947. He found that initially it decreased from 1950 to 1960-70 and become low in 1980 and then it reversed later on.

Feredeandand Dahlby (2012) have studied the impact of tax rate on economic growth, they found that high tax rate causes to lower economic growth and cut in tax rate can increased the economic growth.

Scholes et al. (2005) in his study explain why critic always argues that corporates are being discouraged by the current tax system which encourages to make diversion from socially efficient decisions.

From the above studies it is clear that there are many studies are there in the field of corporate taxation, and the taxation of corporates have significant impact on many internal as well as external factors of the company. Unfortunately the author could not find much studies in Indian context or with relate to tax planning. But past studies shows that if the tax system can be simplified and tax rate can be reduced it will increase the accumulation of profit and such profit can be invested for economic development of the company. So the Present paper try to throws light on various tax provisions with regards to Indian corporate and how an Indian company can make tax planning to reduce the tax liability. Also the paper discusses what are provisions available under income tax law for tax minimization legally?

OBJECTIVE OF THE STUDY:

The objectives of the study are as follows:

a. To make a conceptual comparison between tax planning, tax avoidance and tax evasion.
b. To discuss tax incidence of Indian corporate under Income Tax 1961.
c. To discuss the various provisions of Income tax applicable for companies in India and scope of tax planning.

CONCEPTS OF TAX PLANNING, TAX EVASION AND TAX AVOIDANCE

TAX PLANNING:

Tax Planning means judicious use of all the benefits like exemption, deductions, rebates and relief available under the act to minimize the tax liability. In other word it can be said efficient arrangement of financial affairs within four corner of law while availing exemption, deductions, rebates and relief so that tax burden will be minimum. Tax Planning does not use any colorable devices, it is fully legal.

TAX AVOIDANCE:

Tax avoidance is taking undue advantage of loop holes of law to minimize the tax liability. It takes advantages of some provisions or lack of provisions of law. Though Tax avoidance is not punishable still it is socially undesirable as it causes substantial loss of public revenue.

TAX EVASION:

It is an attempt to reduce the tax liability by making falsification claim or by hiding some fact or by providing wrong information regarding real income. It illegal and punishable under the law. In many cases the law has been directed to discourage tax evasion and punish the culprit engaged in such activities which causes to substantial loss of revenue to the Government.

In Tax planning both the letter and spirit of law are being followed but in tax avoidance letter of law may be followed but the spirit is not followed. While tax evasion is completely illegal and liable to penalty and prosecution. Tax planning minimizes the litigation and enhances productive investment.

TAXATION OF CORPORATES:

Meaning and types of company as per Income Tax:
As per Sec-2(17) of Income Tax Act Company means
(I) Any Indian Company or
(ii) Anybody corporate incorporated by or under the laws of country outside india
(iii) Any institution, association or body which is or was assessable or was assessed as a company for any assessment year under Indian Income tax act for any assessment year commencing on or before 1st April,1970, or
(iv) Any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of board of company.

The Companycan be classified into the following types from taxation point of view:
1. Indian Company
2. Domestic Company
3. Foreign Company
4. Widely held company
5. Closely held company

TAX INCIDENCE OF A COMPANY:

The taxability of income of a company is depend upon the residential status of such company.A company is said to be resident if it fulfills the following conditions:
(a) An Indian company,
(b) Control and management of its affairs situated wholly in India,
If any one of above two conditions are not satisfied then it is non-resident.

TAX INCIDENCE:

Resident Company: All the incomes received or deemed to be received in India, accrues or deemed to accrue in India or outside India is taxable.
Non-resident: All the incomesreceived or deemed to be received in India or accrues or deemed to accrue in India is Taxable.

CONCEPT OF MAT

MAT means Minimum Alternative Tax and it is applicable to the companies.If tax payable by a company on its total income is less than 18.5 % (including education cess and surcharge) of its book profit then the company have to pay a tax of 18.5 % (including education cess and surcharge) on its book profit. In this context book profit will be calculated by adjusting the net profit as per the provisions of Sec.115 JB of Income tax Act.1961.

TAX PLANNING:

1.The Company can prepare a separate account for tax to reduce the book profit and net amount of income tax will be debited to P& L A/c.
2. A company may charge higher depreciation to reduce book profit.
3. If a company has some asset to be sold at profit and some at loss then company should sale both asset in the same year.
4. Two or more company may form a partnership firm, as MAT is not applicable to Partnership firm, so that tax liability under MAT will be reduced.
5. Proper planning for loss and unabsorbed deprecation may reduce tax.

TAX PLANNING FOR NEWLY SET UP COMPANY:

When a person wants to set up a new business he has to consider many factors such as nature, size, location of business and capital structure etc. from risk taking point of view. Because these factors have their own benefits and limitations. Except this from income tax point of view the following points are considered:
a. Nature and size of business

b. Location of Business
c. Form of business organization
d. Capital structure

a. Location, Size or nature of business:

As the Income tax provides different benefits to different company on basis of their location,size or nature so the entrepreneur has be careful regarding this. Some of the benefits are follows:

- Agricultural Income is fully exempt u/s 10(1).
- Income from newly setup business in SEZ is exempt u/s10AA
- Deduction in respect of infrastructure development undertakings u/s80IA.
- Deduction in respect of undertakings engaged in development of SEZ u/s80IAB.
- Deduction in respect of industrial undertakings u/s80IAB.

b. Forms of business organization:

As tax provisions in respect of tax rate and tax benefits applicable to different organizations like individual, partnership firm, company etc. are different. So every forms has their own advantages and disadvantages. Like Individual is taxable as per slab rate while company is taxable as per flat rate. Individual gets deductions under sec 80C up to maximum of Rs. 150000 and company gets deduction under some other sections. MAT is applicable to a company while AMT is applicable to others.

TAX PLANNING TO CAPITAL STRUCTURE:

`Capital structure refers to composition of debt and equity fund in the total capital of the company. As from tax point of view debt fund is tax free while equity is not. So the proper combinations of debt and equity can maximize the value of firms and give more tax benefits.

TAX PLANNING:

1. If rate of interest is higher than ROI then minimum debt capital should be used.
2. If interest is payable outsideIndia then TDS must be paid to get as deduction.

Tax Planning to Dividend Policy: Dividend is distribution of profit among the shareholders. It may be both in cash and in kind. Dividend received from Indian company is fully exempted while dividend received from foreign company is taxable in the hands of shareholder. However the company need to pay dividend distribution tax, but deemed dividend u/s2(22)e is taxable in the hands of shareholders. In this case a company may issue bonus shares to equity share holders instead of dividend is cash, so that company does not have to pay tax. But shareholder will be liable for tax in such transactions.

CONCLUSION:

In Indian context there are very few in this regard. But past literature on corporate taxation shows that there is a cause effect relationship between the corporate taxation and dividend policy, capital structure, industrial growth etc. As tax is a compulsory payment so no one can escape from it, so now the question is, can this burden minimized? Yes tax burden can be reduced by proper tax planning. In this context we should be careful that tax planning is different from tax avoidance and tax evasion. Tax planning is socially desirable while the other two socially undesirable. The Income tax Act.1961 provides lots of devices that can be used by the company in arranging it financial affairs so that it has to pay minimum tax.The present paper discusses the strategies available under Income tax Act-1961. Our Income Tax Act provides various advantages to our Indian corporates. Such facilities can be properly used as discussed in the above so that tax liability of the company will be minimum. The paper concludes that the proper tax planning results into tax savings; it discourages use of colorable devices and tax avoidance.

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