PREFACE

The subject of taxation has always been a debatable and fascinating one as there exists a deep sense of contrast in claims of tax department on one side and the assesses on the other. With the advent of the era of globalization and liberalization, the magnitude of this subject has increased manifold. This has resulted in creation of a specific branch of this subject which deals with only international transactions and is known as ‘International Taxation’. The ‘International Taxation’ aims to avoid double taxation which may arise in respect of an international transaction and to prevent tax avoidance or evasion which may arise due to malpractices adopted by the members of business community.

The underlying objective of this thesis is to study and examine the disputes relating to international tax avoidance and evasion. The roots of this study can be traced in the jurisprudential aspects of international tax regime. The international tax regime consists of two main elements, namely, international tax agreements and the domestic legislations on taxation law. International transactions take place within the framework created by these two constituents. The creation of this framework is considered to be a miraculous achievement as different countries have agreed upon a formulae to share their revenue earnings from international transactions which otherwise could have been taxed by both the countries. In addition to this avoidance of double taxation on international transactions, the framework of international tax regime tries to prevent tax evasion and avoidance at international level. A critical analysis of this particular role of the regime has been made in light of recent developments on the subject.
International tax agreements are the treaties concluded between countries in relation to their tax matters. They may be bilateral (if concluded between two countries) or multilateral (if concluded between three or more countries). The two main objectives of such agreements are avoidance of double taxation and prevention of tax evasion. India has a voluminous structure of various bilateral agreements called ‘Double Tax Conventions’. This voluminous structure is based on some of the model conventions which are promulgated by the United Nations and Organization for Economic Cooperation and Development. Apart from these double tax conventions, India’s international tax agreements structure comprise of multilateral tax agreements on exchange of information and mutual administrative assistance. The role of such agreements is certainly indispensable in curbing the malpractice of international tax evasion and avoidance.

The *Income Tax Act*, 1961 may be older than five decades and there might be a proposal to have new Act in shape of ‘Direct Tax Code’ in near future, however, it still holds ground as the domestic legislation for taxing income earned in India. The newly proposed legislation under the name direct tax code which shall subsume all tax legislation on income and wealth is still a distant dream. Presently, the *Income Tax Act*, 1961 is the inclusive legislation which is important from the point of international tax regime. It contains provisions relating to computation, assessment and collection of income tax on both intra country and international transactions. There is a comprehensive structure of the provisions which specifically act as tool in hands of tax administration to check tax evasion or avoidance. Such provisions include power to conduct search and seizure operations; survey; anti-avoidance rules; and reassessment. All these powers can be used to curb any malpractice of tax evasion and avoidance which may be adopted by national or international taxpayer.
Traditionally, international tax agreements and provisions of domestic legislation were considered to be the main constituents of the international tax regime. Of late, the tax administration has also been recognized as one of the important pillars of this regime. The tax administration has been established under the provisions of the *Income Tax Act*, 1961 which functions under a multi-tier hierarchy. At the top of this administration is the Central Board of Direct Taxes which functions under the control of the Ministry of Finance. All the powers for curbing tax evasion and avoidance are exercised by the officers manning the income tax administration. Apart from the tax administration working at national level, there are certain international organizations which are researching and are working on the international tax regime. These organizations are playing an important role in the development of the best practices for curbing international tax evasion and avoidance.

Although creation of this international tax regime by the above mentioned constituents is considered to be a miracle, however, this miracle is a flawed one. It is because of the number of international tax disputes which are landing in courts and are reported in various journals. An analysis of such disputes reveals that no doubt the international community has decided and has settled upon a particular regime, however, several loopholes exist in it. The presence of the various tax havens, bank secrecy laws and harmful tax competition has resulted in rampant tax evasion and avoidance at international level. The effect of these malpractices is ruining the developing economies like India which face huge revenue losses.

The defects in the international tax regime are further visible from the recent disputes like the *Vodafone case* and *Shell India case*. Interactions between international tax agreements and the domestic legislation have also produced certain undesired results. The overzealous nature of tax administration is ending up in making assessments on fictitious income which
was not desired by the regime. The interpretations given by various courts and retrospective amendments which are made by the legislature has thrown open a tug of war between the two wings of the Indian jurisdiction. All these factors are contributing towards the negative aspect of the international tax regime. The present study while analyzing these situations makes certain suggestions which may go a long way in contributing for the improvement of current position. The law stated in this thesis is as it stood on 31 December 2014.

Place: Patiala

Date:  