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CONCEPTUAL MECHANICS OF STATUTE OF INCOME TAX

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ABSTRACT :

Given the issues at hand and their import, a nescient approach towards the preamble of the Act will further exacerbate and obfuscate the quandary involved herein, since it, generally, represents and portrays the aim, objective, policy, and purpose of a statute; and so the need to decipher, determine and discuss the role and significance of preamble cannot be set aside. This has been noted in *In Re Kerala Education Bill, 1957*¹ too, wherein the court observed that from the preamble of a statute its policy and purpose can be legitimately derived. Apart from the writings of several pioneering scholars, numerous leading authorities and judgements concerning the need, role, and significance of a preamble in a statute have been eruditely pronounced.

INTRODUCTION :

Black's Law Dictionary spells out preamble, a noun, in the following words: "*in a constitution, legislation or another document, a prefatory statement clarifying the document's objective and aim; notably, a statutory recital of the inconveniences for which the legislation is meant.*"² But still, presently, the preamble of the IT Act of 1961 is no more than a gesture of window-dressing, which, in the following words, is set out in the Act:

"An act to consolidate and amend the law relating to income-tax and super-tax."

Even the preamble of the IT Act of 1961 was cladded in identical words as aforementioned, thereby signifying no change in the statute's object, purpose, or aim which the government, via such statute, seeks to achieve or attain, albeit there might have been substantial changes or alterations concerning structurization and provisions of the act. Critically speaking, having the wordings of a preamble as aforementioned, evinces no more than an indication of consolidation and amendment of some concerned enactment/enactments; and enactments having such consolidating preambles cannot be claimed to possess a "preamble" *properly so called*, for they are bereft, in substance, of any preamble.

So, it is likely reasonable to deduce that preamble is not just a cosmetic embellishment to a statute, but a lodestar illuminating, indicating, determining, and projecting the policy, purpose, aim, and objective of the concerned statute, and such position has been noted down in the authority *Maharashtra Land Development Co. & Ors. vs State of Maharashtra & Anr.* Such being the position, contemporary taxing statute sports a 'blatant nebulousness'

¹In Re Kerala Education Bill, 1957 (1959) 1 SCR 995

²Black's Law Dictionary (Seventh Edition), pg. 1194

concerning its preamble, justifying its apparent legitimacy in the name of constitutionally-derived legitimate authority. By doing so it takes ahead the legacy of exploitative colonial power which enacted revenue statute with an altogether different purpose of ‘economic looting’ with just about no authority in principle, hoodwinking the public about the statute’s legitimacy. Though one may press into article 372³ read with article 13(1)⁴ of the Indian constitution to argue or support the legitimate validity of the Act, such contention being *prima facie* appreciable, at roots lacks a strong foothold because the status of Christian-colonizer Britishers being invaders, they did not possess any legitimate authority to enact any enactment, be it taxing statute or so, for virtually every enactment imposed is an instrument to exploit and oppress the colonized in some way or the other.

So, to conclude, it is reasonable to assert that the preamble of the Act is no more than that of a consolidating statute, thereby obscuring the use and importance of the preamble since the preamble plays a crucial role in determining the object, purpose, and policy of the Act for which it is enacted. Given the import of transparency and the right to information in a democratic polity, it is inevitably imperative to know for what purpose or policy or objective a share in the labour of citizens, as taxes, is sought by the state, rather than the cliche that prevails in the society. Also, the internal moralities of law demand the preamble of the statute to be certain, precise, concise, clear, explicit and so.

The legitimacy of the IT Act :

During the indelibly exploitative Christian-invaded-British colonizer’s oppressive rule, the Britishers possessed neither power nor authority; the difference, as marked by Max Weber, between the two is that when influence is exercised by a person over other person/persons, irrespective of the will of the latter, is regarded as power, whereas when the such exercise of influence is accepted voluntarily by person/persons over whom such influence is exercised is regarded as an authority.

So, the power commanded and exerted by the invader Britishers, via which they enacted, rather imposed, myriad laws and justified every sphere of Indic society, was an instance of explicit *illegitimate power*(the power which is not recognized by the society⁵), and even if it is dared to assume such power as *legitimate*(legitimate powers are the powers recognized by the society⁶), it was predominantly *coercive*(power which uses or threatens the use of physical means to obtain compliance⁷), peripherally supplemented with *utilitarian power*(power resulting in material rewards⁸) and *identitivewpower*(power which uses symbols to influence people to identify with the organization, viewing their interests as their own⁹).

³ Article 372: Continuance in force of existing laws and their adaptation

⁴ Article 13: Laws inconsistent with or in derogation of the Fundamental Rights

⁵ S. R. MYENI, Sociology For Pre-Law First Year, pg. 278

⁶Ibid

⁷Ibid

⁸Ibid

⁹Ibid

But having the sun of political independence risen in India, the Indian state, as a collective unit, wielded legitimate social authority and power, which was mobilized due to the Indian independence movement.

Adding to it, the legitimacy of the colonially-enacted Income Tax Act of 1922 (predecessor to the Act) can be questioned on the anvil of legitimate ‘authority’ since the Christian-inspired British colonizers wielded none of the following three:

- (i) **Traditional Authority:** It is that authority which people obey by habit, simply because it has so been done in the past, with the nature of authority being personal and irrational, and controlled mostly by tribal life;¹⁰
- (ii) **Charismatic Authority:** It is the second type of authority wherein people comport voluntarily under the spell of some person who dons some extraordinary qualities, and the person, owing to others’ faith in and respect for him, is obeyed, with the nature of authority is personal and rational;¹¹ and
- (iii) **Legal-Rational or Bureaucratic Authority:** This last type of authority is prevalent in modern industrial society. Such authority is obeyed due to a specific position of office and not some person, with the nature of authority being formal and its privileges being limited and defined by law. To obtain the desired ends, such authority has been hailed as the most efficient and rational means known for coordinating human resources, because the person in bureaucratic office/status hardly exercises any control and opportunity of employing their structured judgement but is rather required to simply act by the written set of rules, records, and files.¹²

So, in light of the aforementioned discussion, it can reasonably be concluded that invaded colonizers wielded neither any legitimate power nor any legitimate authority as such, even though the Indian constitution via article 372¹³ read with article 13(1)¹⁴ endeavors to iron these creases to some extent.

Concept of Income :

The statutory definition of income provided under Section 2(24)¹⁵ of the Act (Section 2(6C)¹⁶ of Income-Tax Act, 1922) includes several instances of income, and every kind of income is illustrative in nature since the starting words of the provision being ‘*income includes*’ make the definition an inclusive one, in contrast to exhaustive one. Such being the position of the statutory definition of income, the courts across different jurisdictions around the globe have unerringly rendered a wide and expansive interpretation of the definition of ‘income’; particularly in the context of its presence either in a taxing statute or in a

¹⁰S. R. MYENI, Sociology for Pre-Law First Year, pg. 281

¹¹WAYNE MORRISON, Jurisprudence: From the Greeks to Post-Modernity

¹²Ibid

¹³*supra* note 12

¹⁴*supra* note 13

¹⁵Income Tax Act, 1961, § 2(24), No. 43, Acts of Parliament, 1961

¹⁶Income Tax Act, 1922, § 2(6C), No. 11, Acts of Parliament, 1922

constitution. Numerous authorities and judgements laid stress on different dimensions of 'income' and thereby interpreted the statutory conception of income in consonance with those distinct dimensions.

In the case of **CIT vs Shaw Wallace & Co.**¹⁷, the hon'ble Calcutta high court upon a reference made to it under S. 66 of the then-applicable Act, had the opportunity to interpret the term 'income' as found in the then applicable taxing statute. Stressing on the object of the then applicable taxing statute, the hon'ble court noted:

*"The object of the Indian IT Act is to tax "income," a term which it does not define. It is expanded, no doubt, into "income, profits, and gains," but the expansion is more a matter of words than of substance. Income, their Lordships think, in this Act connotes a periodical monetary return "coming in" with some sort of regularity, or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything like a mere windfall. Thus income has been likened pictorially to the fruit of a tree, or the crop of a field."*¹⁸

So, from the above it can reasonably be deduced that a receipt to be having the nature of income should have the element of 'coming in', but the hitch to this hunch comes as and when the source of 'coming in' is discarded and a cavalier approach is being taken to the source, no matter is it lawful or unlawful.

Moving ahead, in another case of **Kamakshya Narayan Singh vs CIT**¹⁹, which concerned the ambit of income, Lord Wright considered and examined the statutory definition of 'income' as was then provided under the relevant provision of the then Income Tax Act of 1922, noted that "*income is a difficult and probably impossible word to define in a universally applicable formula. It's a term with the widest possible meaning.*" In the same line of reasoning and chain of authorities, it was pointed out by the PC in **Gopal Saran Narain Singh vs CIT**²⁰, that "*unless specifically exempted, anything that may properly be classified as income is taxed under the Act.*" From these two cases, it can be implied that given the nature of income read with the stated object and purpose of the Act, it can in no manner be comprehensively and precisely defined, either statutorily by any Act or judicially through any judgement or determination.

By the same logic, the hon'ble Indian Supreme Court in **Navinchandra Mafatlal vs CIT**²¹ had the opportunity to cogitate, deliberate, discuss and dissect the statutory expression of 'income' at length as was then provided under the relevant taxing statute to determine its true position in the statute, and putting its interpretational ingenuity at using the court therein

¹⁷CIT vs Shaw Wallace & Co (1932) 6 ITC 178 (Cal)

¹⁸ http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/unit_1_of_income_tax.pdf

¹⁹Kamakshya Narayan Singh vs CIT (1943) 11 ITR 513 (PC)

²⁰Gopal Saran Narain Singh vs CIT (1935) 3 ITR 237 (PC)

²¹ Navinchandra Mafatlal vs CIT AIR (1955) SC 58

constructed the statutorily provided definition of ‘income’ in light of its contextualising colours as:

"So, what does the term 'income' signify in its ordinary, natural, and grammatical sense? The dictionary defines it as anything that comes in. The term 'income' is used in a broad meaning in the United States of America and Australia, both of which are English-speaking countries, to include capital gains. In each of these circumstances, the word 'revenue' was given an extremely broad definition as its natural meaning. The pertinent observations of learned Judges in those cases, which have been cited in Tendolkar, J.'s judgment, clearly show that the word 'income' was given such a broad meaning not because of any specific legislative practice in the US or the Commonwealth of Australia, but because that was the ordinary concept and overtone of the normal English word. Any profit or advantage that is received is included in its natural definition. This is consistent with Lord Wright's views, which have already been mentioned.....With the contention based on an assumed legislative practice out of the way, working in its natural and grammatical meaning to the everyday English term 'income' should be simple. Because it appears in a legislative head imparting legislative authority, the term should be given its broadest interpretation, as previously stated."

Adding to it, in another authority **Bhagwan Dass Jain vs Union of India**²², the hon’ble court therein observed and held that “*the expression of income is of the widest amplitude and that it includes not merely what is received or what comes in by exploiting the utilization of the property but also that which can be converted into income.*” To mention lastly, the hon’ble supreme court of India in another case of **C.I.T. vs G.R. Karthikeyan**²³, after considering different dimensions and aspects of the word ‘income’, gave an expansive scope to such statutory phrase by making the expression of income as provided under relevant taxing statute coterminous with that of income as mentioned in List I of Schedule VII of Indian constitution, thereby widening and stretching the ambit of income, pronounced that: *"Income is difficult to define. The definition of the Act is broad.....Because the definition of income under Section 2(24) is broad, we believe that its scope should be the same as that of the term income in Entry 82 of List I of the Constitution's Seventh Schedule (equivalent to Entry 54 of List I of the Government of India Act).....It would be a mistake to try to fit a particular receipt into one of Section 2(24)'s sub-clauses and then declare that it does not represent income if it does not fit into any of them. Even though a receipt does not fall under any of the sub-clauses in Section 2(24), it may nonetheless be considered income if it has the characteristics of income. The purpose of giving an inclusive definition in Section 2(24) is to broaden its scope rather than limit it. This Court has stated repeatedly that the term "income" has the broadest sense and must be accorded its natural and grammatical interpretation."*

So, all in all, from the aforementioned discussed case laws and authorities, it can reasonably be asserted that it is quite difficult to determine every dimensional aspect of such an

²²Bhagwan Dass Jain vs Union of India (1981) 2 SCC 135

²³C.I.T. vs G.R. Karthikeyan (1993) Supp (3) SCC 222

amorphous expression of income to cover every nook and cranny of it since in every factual matrix such expression, by dint of judicial sanguinity and conscience, gives rise to some new facet.

Scope of Total Income :

Next to 'income', comes the 'scope of total income, as provided, under the Act, which, due to its linguistic form, when read in synchronisation with the expression 'income', as having been judicially construed and constructed as an all-inclusive and all-embracing concept of wide ambit, propels and perpetuates the illogicality of covering income generated through illegal activities in the net of taxation. Given the significance of the 'scope of total income as mentioned under section 5(1)²⁴ of the Act, it is important to discuss it at length:

*"(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes **all income from whatever source derived** which—*

*(a) is **received** or is deemed to be received in India in such year by or on behalf of such person; or*

(b) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(c) accrues or arises to him outside India during such year: "²⁵

The issue at hand does not require us to delve into the entrails of Section 5(1)(b) or Section 5(1)(c) since the point of accrual or deemed accrual does not arise in case of illegal income. So, what concerns the issue at hand is the word 'received', and given its importance for the questions at hand, it deserves to be analysed in detail and depth to decipher and assess the interpretational asymmetry lied in mulcting of illegal income. Also, it is worth mentioning here that different courts across the globe in distinct jurisdictions stressed and substantiated its justification of subjecting income generated through illegal activities to tax on the clinical interpretation of the expression 'from whatever source derived', which is not an uncommon phrase to be found in statutory definitions of total income or, as the case may be gross income. Quite interestingly, the US constitution was amended, and thereby the relevant revenue statute to subject the illegal income to tax.

Though it might seem quite easy to decipher the unpack the interpretational puzzle of 'from whatever source derived' and 'received', had it been so simple, it wouldn't have been the central point of many legal disputes. Adding to it, in an intuitive sense, it does not appear quite satisfactory to acquiesce the fact that the state can do what it prohibits or proscribes not to do by inclining on the phrase 'from whatever source derived' to mulct illegal income. The following sub-section discusses at length the very aspect of 'received by' as understood and applied by the courts in different case laws.

Mechanics of 'Received By' as Recognised by Indian Judicial Conscience :

²⁴Income Tax Act, 1961, § 5, No. 43, Acts of Parliament, 1961

²⁵https://www.incometaxindia.gov.in/_layouts/15/dit/mobile/viewer.aspx?path=https://www.incometaxindia.gov.in/acts/income-tax%20act,%201961/2017/10212000000063745.htm&k=

For the tax to be applicable, the common universal rule is that no obligation to pay tax can be asserted to arise until and unless there is a 'receipt'. Whether or not income acquired through illegal activities or means by a potential taxpayer or assessee ought to be considered as being 'received' by the such assessee for the end of computing such person's total income had been a hot potato both in India and abroad. The absence of the aforesaid phrase from the definitional provision of the statute further exacerbates the legal quandary, leaving the same at the exclusive mercy of judicial conscience perceived as interpretative ventures of the judiciary. The Indian courts, via employing its judicial conscience by dint of its ingenuity, interpreted the statutory phrase of 'received by' in several inventive ways stressing distinct dimensions of the phrase. For income tax to be applied the phrase 'received by' can reasonably be distinguished from the words 'acquired by', since the will of the acquirer may be at play. Given the telling sign of the expression 'received by' in the determination of the liability of a taxpayer, its discussion at length cannot be dispensed with. Banal is to assert that for a specific amount of sum to be taxed, it must perforce be gained as an income in his person or for her benefit thereto, and the reason for its imperativeness is that not all money obtained can certainly be regarded as a receipt of income, as statutorily required.

While determining the length and breadth of the expression 'received', the question that is usually and generally confronted is if the said phrase is construed in its widest amplitude and meaning. Such is the case because, for instance, a person who borrowed a car can be deemed to have received such a car, had the ordinary and widest possible meaning be rendered to the word. By the same logic, if a person has been loaned a specific amount of money from a bank, then in normal terms, the person can be deemed to have 'received' the money. Now, this ripens to a query of whether such construction of the expression is given a status of statutory interpretation. It is to be noted that as and when some item or a specific sum of money is taken as a loan, a relative liability to return such object or to restore such amount emerges. But a puzzle nevertheless then comes to the surface: should 'received by' be not given its widest possible construction, and how the word ought to be construed for the aim and end of income tax statutes?

It is posited that 'received by' must be construed in a manner to mean and imply received by the assessee on his/her behalf for his/her benefit; and if such interpretation is being put to use, it can unerringly be averred that a representative who garners specific sum of amount for and in the name of her principal cannot be meant to have 'received' such amount because the said agent has not received the rentals on his/her behalf for his/her benefit. Such interpretation can reasonably be implied from numerous cases which involved the legal question concerning diversion and application of income.

In *Keshav Mills Ltd. vs CIT*²⁶, it was recorded that "*the receipt of income signifies the very first instance when the recipient obtains the money under his control. Once an amount is*

²⁶Keshav Mills Ltd. vs CIT (1953) 23 ITR 230 (SC)

*received as income, any remittance or transmission of such amount to some other place does not result in receipt at the other place.*²⁷" Furthermore, on critical analysis and dissection of the word 'received by, the hon'ble courts invented, by dint of its interpretational ingenuity, a dual conception of 'application and diversion of income', knifing a thin line of demarcation between 'diversion of income by overriding title and 'application of income in self capacity, with the former involving *income acquired by a person other than the person who is entitled to it* since it is the diversion of income by overriding title, while in the latter case, income is received by the person who is entitled to it.²⁸ Simply stated, 'application of income' can be explicated as any expenditure/investment after income is received, whereas 'diversion of income' is wherein income, owing to some obligation, is diverted to some other person and the assessee received the income on behalf of some other person.²⁹ Though these related concepts may sound easy in theory, these incessantly and unceasingly, in the distinct factual matrix, give rise to umpteen disputes and litigation.

In the leading case of **CIT vs Shri Sitaldas Tirathdas**³⁰, a certain amount of sum was strived to be deducted by the respondent therein on the basis that he was legally obligated to pay the amount in question to his consort and children and so he did not receive that specific amount of sum in his capacity but only received it in a representative capacity in the name of his wife and children, but the hon'ble supreme court turned down the contention pressed in and held it as a case of application, in contrast to diversion, of income. it was noted by the hon'ble court therein that "*The true yardstick is if the amount claimed to be deducted reaches the assessee as income at all. Undoubtedly, there are obligations in every circumstance, but it's the nature of responsibility that constitutes the deciding factor. There is a distinction between a sum that a person is required to apply from his income and an amount that, by its nature, cannot be considered part of the assessee's income. When owing to some obligation, income is diverted before it reaches the assessee, it is deductible; but, when the income is required to be utilized to discharge an obligation after it reaches the assessee, the same result does not follow in law..... The first is when the income never reaches the assessee, who, even if he collects, does so for and in the representative capacity of the person to whom it is owed.*"³¹

In another leading case of **Raja Bejoy Singh Dhudhuria vs CIT**³², the privy council therein, concerning the matter at hand, observed that "*when the Act(the then Indian Income Tax Act) by the concerned provision subjects to charge "all income" of an individual, it is what reaches the individual as income which it is intended to charge..... While their Lordships are disinclined to entertain any argument from the one system to the other, they would infer, if any inference were permissible, that the omission from the Indian Act of any*

²⁷DR. V. K. SINGHANIA AND DR. KAPIL SINGHANIA, Direct Taxes Law and Practice (64th Ed.), pg. 73

²⁸DR. V. K. SINGHANIA AND DR. KAPIL SINGHANIA, Direct Taxes Law and Practice (64th Ed.), pg. 8

²⁹DR. V. K. SINGHANIA AND DR. KAPIL SINGHANIA, Students' Guide to Income Tax (45th Ed.), pg. 6

³⁰CIT vs Shri Sitaldas Tirathdas (1961) SCR (2) 634

³¹ <https://taxguru.in/income-tax/itat-explains-diversion-income-overriding-title.html>

³²Raja Bejoy Singh Dhudhuria vs CIT (1933) 35 BOMLR 811

such provision points rather to an intention to tax, in Lord Davey's phrase, only "the real income" of the taxpayer....."

So, from the ratio pronounced in the aforementioned two cases, it can prudentially be posited that every receipt of acquisition of income cannot be deemed to have been covered under the statutory conceptual net of 'income' for it might have a correlative liability to restore the amount of sum acquired. A mere simple obtainment of some specific amount of money cannot be decisively and conclusively said to have the statutory colour of income. Now coming to another chain of reasoning found in distinguishing and demarcating the 'application of income' from 'diversion of income', the hon'ble court recognised a legal obligation to pay. In another case of *Prince Khanderao Gaekwar vs CIT*³³, it was observed that "*the test to be applied is: is the property lay open to valid and legally enforceable under which such concerned assessee is bound to pay a certain amount recurring annually, and if we apply that test to the factual matrix of the present case, it is indisputable that the assessees are under a legal obligation to pay to their mother a sum every year, failing which it would be open to her to enforce the charge on their respective properties.*" Also, in *CIT vs Makanji Lalji*³⁴ it was noted that "...it is impossible to deduct this sum payable to the widow of a deceased brother, who **gets it in her capacity** ultimately as a member of the joint family."

Furthermore, this interpretational labyrinth and the exegetical issue of 'received by' has been the central issue across different jurisdictions around the globe. In an American case³⁵, the Supreme Court of America observed the following:

"the simple receiving of property or money that one is required to return or repay to the lawful owner, as in the instance of a loan or credit, does not result in taxable income....Taxability is not determined by moral turpitude. The question is whether the taxpayer obtained a statutory gain, profit, or advantage in the first place. The fact that the taxpayer's motivation was immoral or the form of receipt was unlawful does not influence the taxation statute's applicability." Also, in a South African authority of *Geldenhuys vs Commissioner of Inland Revenue*³⁶, the court therein noted that:

"the phrase 'received by him' implies that the money must be given to him in such a way that he is entitled to it. For these taxing provisions, acquiring actual possession over money or money's worth does not always establish a receipt. If money is collected and backed by someone acting as an agent or trustee for someone else, the latter has not received it as income. The borrower is obligated to repay as soon as he takes ownership of the property. The borrowed property does not become her property."

CONCLUSION :

³³Prince Khanderao Gaekwar vs CIT (1948) 50 BOMLR 368

³⁴CIT vs Makanji Lalji (1937) 39 BOMLR 907

³⁵327 U.S. 404 (1946)

³⁶Geldenhuys vs Commissioner of Inland Revenue (1947) (3) SA 256 (C)

Hence, in light of the *ratio* gleaned, garnered and gathered from the aforementioned kaleidoscopic array of cases and the thread of reasoning, it is reasonable to deduce that to have income called *properly such* as to bring it into the contours and confines of taxing statutes, it requires the receipt to be 'received', rather than 'acquired' by the prospective taxpayer or the assessee. Not every acquisition or gain can be deemed by a stretch of legal exegesis to have been 'received' by the taxpayer or assessee, for every receipt not received on behalf of himself or herself in his/her capacity for his/her benefit comes with some commensurate corresponding obligation or liability to restore or return the thing or amount received. To regard a particular sum of money acquired to be a receipt within the meaning of taxing statutes, it demands unconditional and unqualified received absent any correlative liability.

