

Taxing issues

A comprehensive yet incisive history of India's tax dispute crisis

Parthasarathi Shome

MUKESH BUTANI, the author of this book, has had a definite advantage in writing this volume, in that he has not only already researched and contributed voluminously on this topic, but has also been practising on challenging cases in this area. The wide experience comes through in his book. What is pleasantly surprising is that he has also transcended his specialisation in dispute resolution and comprehensively covered what usually falls in the tax economics area by providing an overview of the Indian tax system in the backdrop of the Fiscal Responsibility and Budget Management (FRBM) Act, and attempting a cross-country comparison of India's tax revenue effort. He also traverses the ground of inequity in corporate income tax by citing information that smaller companies have a much higher effective tax rate than larger companies. He concludes the volume with international tax proposals, in particular on the contentious debate over tax base erosion and profit shifting by multinational enterprises.

Approaching his main theme on dispute resolution, a few telling Indian indicators are mentioned, including India's 130th rank in a cross-section of countries in terms of the lack

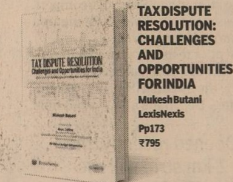
of ambiguity and inconsistency in the application of tax law—by the tax administration for the escalation of tax disputes, inadequate judicial guidance, no mandatory timelines, inefficient refund mechanism, lack of accountability and frequent transfers of tax officers, failure of large taxpayer units to operate uniformly across the cities where they operate, an approach reflecting targets for tax revenue collection, and a patchy citizens' charter of the tax departments. This is exacerbated by the fact that there is little or no stakeholder participation during the formulation of subordinate legislation. On one matter, that of tax amnesty used by successive finance ministers Yashwant Sinha, P Chidambaram and Arun Jaitley, he surprisingly does not offer criticism despite international experience that amnesties do not improve taxpayer behaviour and are, indeed, unfair and inequitable against good, and in favour of, bad taxpayers.

After traversing the prevailing appeal process, alternate dispute resolution forums, settlement commissions, APA, MAP and similar processes, he indicates that the Supreme Court is the final arbiter of dispute resolution, not that there have not been associated controversies or protracted processes for reaching resolution. He cogently provides details of selected court cases from different productive sectors and different issues and matters of contention, continuing to point to aggressive administrative action for tax recovery. He concedes partial unveiling of policy reform, but cautions that "recent reform measures are far from percolating to the grassroots". He benchmarks best international practice against the Indian experience.

Accordingly, Butani elaborates on a menu of sensible recommendations for India. These include engaging stakeholders, improving taxpayer services, reforming Indian tax administration along international lines, and making the assessment process objective, including a computerised mechanism to minimise scrutiny and audit, among others. He also lists the government's recent efforts to reduce disputes and enhance taxpayer confidence by overhauling the penalty regime, limiting collection to a small percentage of tax demand and, reflecting a Delhi High Court pronouncement, modification of existing departmental instruction dealing with remedial action on revenue audit objections.

The volume contains much more, the scope of which is not feasible to cover in a short review. It is highly recommended to be read and digested by those interested in a comprehensive yet incisive history, present practices and feasible reform of India's tax dispute crisis, if not its overall taxation experience.

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of ease in doing business and the frivolous tax demands by the Indian tax administration adding to taxpayers' plight, with a very small improvement in international ranking in the past years. This is especially noteworthy in a government that had made, and continues to make, improving the ease of doing business and reducing tax terrorism as top priority in its policy agenda.

While providing a rather comprehensive historical review of India's efforts at tax reforms, Butani describes the particular challenges of enacting tax laws in India with a fiscal federal constitution, providing evidence from the ongoing process for the introduction of Goods and Services Tax (GST). Arriving at recent times, he reserves his most intensive critique over the government's resorting to retrospective taxation, overturning prior judicial decisions that favoured taxpayers, and its adverse impact on investor confidence.

No wonder Indian tax disputes scale beyond international graphs. Butani discusses various factors that have led to an escalation of disputes. Among others, he blames poor quality of tax assessment—