

Illegal Activities, Bribes, etc. are covered under the new service tax law – June 12, 2012

Illegal Activities, Bribes, etc. covered under the new service tax law....

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Are illegal activities, bribes, kickbacks, etc. covered under the new A billion dollar question indeed... considering the quantum of black money that exists in India and also for transactions that are not routed thro' official channels. Typical examples of amounts exchanged in the hawala deals, amounts involved in the betting market which is banned in India, amounts received by corrupt bureaucrats and corrupt politicians as kickbacks, bribes, etc... the list ,

Are these illegal activities covered under the new service tax law? Yes, of course.

Before discussing this, let's see how, illegal income is treated under the Indian income tax law... the

Income tax Act makes no distinction between legal income and illegal income. To understand this concept, all that one needs to do is to read the decision of the Madras High Court, delivered on

December 5, 2008 in the case of **CIT v Thangamani covering Appeal Nos: – T. C. (A) Nos. 391 & 392 of 2004**
The relevant paras from this very important decision are excerpted below:

Quote :

The primary functions of the Income-tax Act is to bring the income of various kinds into the tax net; illegality tainted with the earning has no bearing on its taxability; the assessee having acquired income by unethical manner or by resorting to acts forbidden by law, cannot be heard to say that the State cannot be a party to such sharing of ill-gotten wealth; even if the assessee was prosecuted by Law Enforcing Authorities for commission of offence, the income earned by the offender still would be an income liable for assessment.

22. The primary function of the Income Tax Act is to bring the income of various kinds into the tax net. The Income Tax authorities are not concerned about the manner or means of acquiring income. The income might have been earned illegally or by resorting to unlawful means. Illegality tainted with the earning has no bearing on its taxability. Income generated by engaging in liquor trade,

generally called as res extra commercium, otherwise known as trade in crime, or income earned by way of selling Khadhi products, are one and the same for the tax authorities. The assessee having acquired income by unethical manner or by resorting to acts forbidden by law, cannot be heard to say that the State cannot be a party to such sharing of ill-gotten wealth. In case of allowing such income to escape the tax net would be nothing but a premium or reward to a person for doing an illegal trade. In the event of taxing the income of only those who acquired the same through legal manner, the tendency of those who acquired income by illegal means would increase. It is not possible for the income tax authorities to act like police to prevent the commission of unlawful acts but it is possible for the tax machinery to tax such income. During such process strict rules of evidence are not applicable to the income tax authorities. Those pieces of evidence which are not sufficient in ordinary legal proceedings to prove a particular fact would be sufficient for the tax officials to assess the income of an individual.

23. The income tax Act considers the income earned legally as well as tainted income alike. There is nothing like an illegal income so far as the Tax Collector is concerned. Even if the assessee was prosecuted by Law Enforcing authorities for commission of offence, the income earned by the offender still would be an income liable for assessment. It is not a defence in such cases that the State is also becoming a party to the illegal act by sharing the booty.

24. There was a clear factual finding recorded by the Assessing Authority as well as Commissioner of Income Tax (Appeals) to the effect that the assessee had indulged in filing bogus TDS certificates and got refund of the amount from the income tax department. It was also the admitted case of the assessee before the income tax department as well as

before the Central Bureau of Investigation during the course of investigation into the offence that he had indulged in the act of fabricating TDS certificates and collecting refund from the income tax department. It was only on account of the said factual matrix that the Assessing Officer assessed the income received by the assessee, by getting refund from the income tax department. However, the Income Tax Appellate Tribunal without any basis set aside the order of the Assessing Authority as well as Commissioner (Appeals) and as such we are of the considered view that the Tribunal committed a serious error by holding that the booty received by the assessee can under no circumstances be the income of the assessee.

25. In such view of the matter, we do not find any ground to sustain the order of the Income Tax Appellate Tribunal. Accordingly the order dated 25.10.2002 is set aside and both the tax cases are allowed. The substantial question of law are decided in favour of the revenue.

Unquote :

Since the definition of 'service' under the new law does not distinguish between legal activities and illegal activities, service tax would be leviable on illegal activities as well. The service tax law would treat illegal activities, in a manner which is similar to that, under the income tax law.

Given this...let's see how this could work in certain practical circumstances.

We hear and read CBI trapping many senior tax officials including Commissioners, etc. while accepting bribes... Are these officers to be treated as rendering 'service' to the people who have given these bribes? Yes, in my view. What is the consideration involved here? Well... it is the activity of providing certain illegal benefits to the assessee, in return for, a bribe. Very recently, the CBI trapped a sitting judge, on the allegation of accepting a huge bribe, for granting bail to a politician. Is this Judge, if convicted, to be treated as a 'service provider' under the new service tax law? Yes, in my view, as this amount is not a fee to a Court or Tribunal.

Bank officials trapped by CBI and State Government officials trapped by the Loy Ayukta are 'service providers' under the new service tax.

Any body who takes a bribe is to be considered as a service provider, under the new service tax law, in my view....

All scams including scams like the 2G might get covered under the new service tax law.

All income tax raids resulting in unaccounted money will have a service tax angle also, going forward. Even, the supari contracts would come under the service tax law..... This could be one major area which could contribute to the service tax kitty, in tens of crores of rupees.....

Corporates would be well advised to take these provisions into consideration, while planning their business activities and ensure that they do not get covered under the penalty and prosecution related provisions of the law.