ABUSE OF SECTION 80GGC OF THE INCOME TAX ACT, 1961 TO EVADE TAXES BY SALARIED INDIVIDUALS

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ABSTRACT

Income tax plays a very crucial role in the revenue of the government and ultimately helps the government to function, and to govern the nation effectively but in India, people don't want to pay Income taxes as the Income tax slab for a high-net-worth individual is very high effectively 30% - 40% of their income that is the reason why people don't want to pay taxes and use loopholes in the Income Tax Act, 1961 (hereinafter referred to as "IT act") to evade the taxes in most possible ways. This study is about one of the ways which is used by high-net-worth individuals to evade taxes and this study is targeted at salaried individuals as it is stereotyped in India that only businessmen evade Income tax not salaried individuals.

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Why in India do People Evade Taxes?

People who pay taxes generally feel that by paying taxes to the government they are doing charity because in most cases their arguments are government are going to use that money in government schools and government hospitals and neither their children will go to a government school in their life neither they will go in government hospital for treatment in their life because the quality of service given in the government schools or government hospitals is inferior. Even if they are paying taxes properly, they have to run their vehicle on the same road that contains potholes and the person who is not paying the taxes will also run his vehicle on the same road so what kind of benefit as taxpayers, they are getting nothing.

These types of arguments and mentality lead a taxpayer to evade taxes in India which is commonly found among taxpayers but not only these are such arguments that taxpayers states, one of the biggest arguments given by them is there should not be a tax slab and everyone should be treated equally in terms of paying taxes like if a person is earning Rs. 1,000 and if a person is earning Rs. 10,00,000 then both have to pay equal percentage of tax from their income irrespective of their income. If we see data the latest data from the income tax department then it is very clear that although the number of fillings has increased from past years but most of them are filing zero or nil tax returns.[3]

How Salaried Individuals Evade Taxes

It is the stereotype in India that only businessmen evade taxes because if a salaried individual wants to evade tax, he cannot do that as salaried individuals get their salary after deduction TDS (Tax deducted at source) as per section 192(1)[4] of the IT act it is mandatory on the side of the employer that he shall deduct tax before paying the salary to the employee. By looking at this provision it looks like a salaried individual cannot evade taxes but many loopholes in the IT Act are used by salaried individuals to evade taxes.

- **Section 80GGC of the IT Act**
  As per Section 80GGC[5] of the IT act if any person donates or contributes any amount to any political party that amount will be reduced from his taxable income and hence the amount that is donated by that person will be used as a deduction while calculating the taxable income.

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- **Modus Operandi of Abuse of Section 80GGC of the IT Act**
  To understand the modus operandi of abuse of Section 80GGC we have to understand it with a practical illustration:

  'Yasin', who is a salaried person and a high-net-worth individual who earns Rs. 1,00,00,000

[3] *New record of over 6.77 crore income tax returns (ITRS) filed till 31st July, 2023; record growth of 16.1% year-on-year* (2023) *Press Information Bureau*. Available at: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1944821 (Accessed: 09 December 2023).

[4] "Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax1 *** on the amount payable at the average rate of income-tax2 *** computed on the basis of the 3 [rates in force] for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year."

[5] "Deduction in respect of contributions given by any person to political parties. —In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a political party or an electoral trust."

(Before deducting TDS) as a salary per annum by doing a job in an IT company. So as per section 192(1) employer deducts Rs. 30,00,000 TDS (30% effectively as per the slab rate) from his income and deposits the remaining Rs.70,00,000 in the bank account of Yasin as a salary. Now Yasin goes to a political party with the intent to evade tax, Yasin proposes to the political party that he wants to donate the sum of Rs. 80,00,000 through cheque to their party fund, but in return, they have to give him Rs. 75,00,000 in cash. By doing so that the sum cannot be traced by the income tax department and the party gets Rs. 5,00,000 as a commission against this transaction, the party agreed on this and participated in the transaction.

Now after this Yasin claims that Rs. 80,00,000 from the income tax department as a deduction under section 80GGC while calculating the taxable income, and say that his taxable income is only Rs. 20,00,000 and as per slab rate and he is liable to pay only Rs. 3,60,000 (18% effectively of Rs. 20,00,000) as per tax slab. The TDS deducted against his PAN (Permanent Account Number) is Rs. 70,00,000 and his tax liability is only Rs. 3,60,000 so kindly adjust the remaining Rs. 66,40,000 and the Income tax department has to make this adjustment as per Section 80GGC of the IT act.
So the above illustration shows how by abusing Section 80GGC of the IT act Yasin evades Rs. 66,40,000 from the Income tax department by just giving a small amount of commission to the political party and just paid Rs. 3,60,000 as a tax on the income of Rs. 1,00,00,000. This is one of the methods used by many salaried persons to evade huge amounts of taxes from the income tax department.

Is this method is undetectable by the Income tax department?

No, It is possible that sometimes an Individual can be successful in evading taxes but it does not mean that the income tax department will never detect or track this method of evasion or any other method of tax evasion. It is very simple for the department to track this kind of tax evasion as if any person is using this method of evasion, then he must have a huge amount of cash with him that is undeclared and unaccounted (Black Money) and his expenditure and style of living can never be justified according to his declared income on which he had paid taxes, as in above illustration Yasin is paying tax on only Rs. 20,00,000 but his standard of living is always more that because he will also going spend that unaccounted money and that expenditure or lifestyle will never be justified by his declared income.

Conclusion

In India, tax evasion is not only done by businessmen it is done by salaried persons and that is also on a large scale by using certain loopholes in the IT Act and there is a need for strict amendment in the IT Act which can help the government to function, and to govern the nation more effectively. Tax planning is always better than tax evasion because by doing tax evasion you are taking part in an illegal activity and once your evasion is detected by the department then you will be penalized and you have to face many more complications. Tax planning is a far better method to save money.