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Session IV: Some important aspects of the Indian Foreign Trade

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to explain the source from which the monies are ploughed into this country then some sort of an incentive should be given vis-a-vis such retention so that there is a stimulus to those people to be able to retain the monies in the country.

He also suggested that there should be thinking on the subject that whether dividends should be subjected to tax or not and that whether all companies should be subjected to tax on such other rates which compare very favourably with the rates which are applicable in other developing countries.

He further suggested that the time has now come that we have a uniform definition with reference to the aspect of residents and non-residents assessees. He was of the view that we should adopt the parameters which are there in the Foreign Exchange Regulation Act as that Act makes a distinction very clearly between a citizen and a person who is not an Indian. He pointed out that it is the objective of the person which is important and merely because of the fact that for certain reasons, he has stayed in India or overstayed in India, he cannot be penalised by subjecting his global income to tax in India, and therefore in this context amendments are required.

Another suggestion was that the deeming provision in the Income Tax Act should be thoroughly overhauled, if we are to insulate the foreigners against income-tax i.e. Indian Income Tax on incomes which arise abroad or which arise to them while they are in India. He pointed out that the exceptions to the provisions should be more liberal and more realistic.

He also felt that the provision with reference to dividends paid outside India, interests paid by the government of India and others who are resident in India and royalty paid, and other provisions which say that they will be deemed to accrue or arise in India, should be done away with.

He was of the view that as in Pakistan we should also permit any Indian to maintain a non-resident account i.e. an account in foreign exchange.

Session IV

SOME IMPORTANT ASPECTS OF INDIAN FOREIGN TRADE

Mr. Anil Divan, Senior Advocate, Supreme Court of India and President Lawasia chaired this session. He began the session by pointing out that the legal profession has a prophylactic role to play and lawyers therefore, are very much interested in all reforms particularly reform where foreign investment has to come in a big way.

He further pointed out that an Indian citizen perceives three impediments to his well-being, the first is the legal system which is very slow, the second is the political system which has not delivered the goods and the third is the bureaucratic system which is not responsive to their needs. He was of the opinion that with the modernisation of the economic system and the liberalisation of imports and exports the judicial system will have to respond to it.

Mr. Rameshwar Thakur, Minister of State for Finance, who was the next speaker was of the view that economics has become a major factor in the world today. He said that India had lesser resources but inspite of that it has grown and given results. He further said that India was now self sufficient in food production and was also exporting food grains to some extent from India. He also pointed out that India has a large potential of development in the areas of food production, agricultural and agricultural development. He said that in the fiscal policy two basic changes were being considered one was to have a direct taxes code which would be an integration of the law of Income Tax, Wealth Tax and Gift Tax. He spoke about the structural changes in direct and indirect taxes for which Dr. Chellaiah's Committee had been appointed. He hoped that because of one or two legislations during the current budget session, we should be able to give real support to the new policies which we have evolved.

The Secretary of the Planning Commission of the Government of India, Dr. Nitish K. Sengupta, pointed out that India in her development experience never gave up the Private Sector although there was a lot of pressure for it from time to time with the result that the Private Sector and the Public Sector existed side by side in a desired balanced combination. He praised the wisdom of the founding fathers for continuing this policy of mixed economy which inspite of changes basically still remains a sound policy. He then pointed out the great advantages which India can afford to the Foreign investors. According to him, the advantages include the larger size of the India's market, the existence of healthy Private Sector, the record of the profitability of Companies and also India's base for technological man-power, scientific man-power and managerial man-power and finally the infra-structural requirements like the banking system, the stock market and the primary market. In this context he pointed out about India's managerial strength and India's record of repatriation of profits by foreign investors. He also said that India had never gone back on any international payment obligation. He was of the view that if foreign enterprises were thinking in terms of corporate long terms prospects, India was a country which could never be ignored. He was of the view that India, should encourage foreign investment in equity which in the long run is more productive and much less expensive. He remarked that India was attempting to integrate its financial system with the global financial system.

Next Mr. J. B. Dadachanji, Advocate, and Member of the Expert Group of the United Nations Commission on International Trade Law, presented his perceptions. He pointed out that the apprehensions that a foreign investor has in his mind relating to investment in India. The first apprehension was relating to the legislative instability in India. He believed that it would be constructive if the government of India were to give certain stability to foreign investment. He was of the view that foreign investors were apprehensive about the uncertainty of the taxation and the fear of retrospective taxation and they were also apprehensive about the Intellectual Property. He further said that the Chambers of Commence have now recommended to the Government that it would be in the interests of the national policy if the government were to sign the Paris Convention with certain safeguards. He was of the view that to encourage foreign investment upto 51% there should be no fetters attached to it. Besides the formula of Reserve Bank of India relating to disinvestment was also very artificial and so the foreign investor had to suffer.

The next speaker was Mr. Dara P. Mehta, a practising Solicitor in Bombay. He concentrated on three issues. The first issue was relating to the threshold of 40% which he said was never statutorily recognised by the Foreign Exchange Regulation Act. He was of the view that this 40% ceiling was brought in by administrative policy which was introduced as early as in 1950 when Jawaharlal Nehru made a statement to the effect in the Parliament. Secondly, he felt that the present policy of according approval for foreign investment is coupled with very strict conditions and these conditions that are attached to the policy render the approvals less automatic route with such conditions, because few investors prefer the automatic route with such conditions.

He was of the view that the new Policy should have said that investments will be considered on their Merits without the requirement of a transfer of foreign technology. Speaking about litigation in India, he felt that lawyers perhaps were responsible for the delays which occur in the courts, and that the Government was the biggest litigator in India. He urged the legal profession and also the Government and its agencies who seek to defer legitimate obligations by having to resort to long and protracted litigation to fully co-operate with each other in trying to reduce the delays of litigation.

Session V

TORTS LIABILITY OF CORPORATIONS THE AFTERMATH OF BHOPAL

Ms. Jayanthi Natarajan, Member of Parliament (Rajya Sabha) chaired the session. The discussion was initiated by Mr. F. C. Nariman, Senior Advocate, Supreme Court of India and Vice Chairman of the International Court of Arbitration. He pointed out that the tort system of law in India is still being governed by the Common Law System and there is no express statutory provision except "The Public Liability Act" which was passed just a few months ago and which provides for a compulsory insurance of industries or industrial