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Analyzing Information Technology Act, 2000 through a Taxman's lens

Technology has transformed trade and commerce. It has revolutionized business models and methods of communication - from local shops to e-commerce giants, paper currencies to bitcoins, postcards to WhatsApp chats – blessing us with cost and time optimization tools, improved communication channels and faster and secure payments anytime, anywhere. However, the innovations are fraught with various risks. Cybercrimes, deepfakes, and virtual tax havens are some of the worldwide concerns. India strategizes

on proactive and reactive measures to counter these threats. While our technology laws provide a governance framework, the taxation laws attempt to seal any probable revenue leakage opportunity. Hence, synchronization between these laws is indispensable.

Introduction

The year 2025 marked the silver jubilee of the Information Technology Act 2000 (IT Act 2000). The Act received the assent of the Hon'ble President of India on 9th June 2000 and came into force on 17th October 2000. It has revolutionized the digital landscape of the nation over the last two and a half decades.

The economic reforms of 1991 gave a fillip to the Indian IT industry. The liberalization, privatization, globalization, deregulation, and decontrol measures opened the Indian economy for wider participation of industrial counterparts across the globe. As per India's Tenth Five-Year Plan (2002-2007), the IT sector was one of the fastest growing segments of Indian industry, registering a growth from Rs. 13,200 crores in 1992-93 to Rs. 80,884 crores in 2001-02. Further, the IT exports from India witnessed a steep rise from Rs. 1,454 crores in 1991-92 to Rs. 42,371 crores in 2001-02, with software exports being the major contributor.

The advancements in information technology, like electronic contracts, cashless transactions, and digital signatures transformed the way of doing business. However, with

these innovations, we saw a rise in cybercrimes. Instances of data breaches, viruses and ransomware infections, hackings became quite common, calling out for stringent laws and regulations to curb the technological risks. This marked the birth of the IT Act 2000.

During the discussion in the Parliament, Late Shri Arun Jaitley stressed the two-fold purpose of the bill. Regulation of e-documentation, e-commerce and e-communication was the first part and bringing cybercrime within the ambit of law was the second goal. Further, Late Shri Pramod Mahajan, the then Minister of Information Technology, while mentioning IT as the fourth generation of human communication, highlighted the problem the government faced while presenting the Subrahmanyam Committee Report on a CD-ROM in the budget session of Parliament in the absence of any corresponding law to that effect.

The Preamble of the IT Act 2000 specifies the three-fold objectives as follows-

1. To provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic

communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information.

2. To facilitate the electronic filing of documents with the Government agencies, and
3. To amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

The IT Act 2000 not only legalized the e-documents but also significantly affected the operation of other laws of the land as well. In this article, let us analyze some of the points of conjunction between the Tax Laws of India and the IT Act 2000.

Legal Recognition of Electronic Records

Section 4 of the IT Act 2000 provides legal recognition to e-records. It says – "Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement

shall be deemed to have been satisfied if such information or matter is –

- (a) rendered or made available in an electronic form; and
- (b) accessible so as to be usable for a subsequent reference.”

Hence, the legislature has brought electronic records at par with the hard copy of documents, provided that the e-record is capable of being utilised. Let us consider *Notification No. 102/2007-Custom dt 14.09.2007* to analyse the impact of this section on a taxman.

The Central Government vide *Notification No. 102/2007-Custom dt 14.09.2007* exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-Section (5) of Section 3 of the said Customs Tariff Act.

Para 2(e) of the said notification enlists the following three documents which an importer availing exemption must produce:

- (i) document evidencing payment of the said additional duty.
- (ii) invoices of sale of the imported goods in respect of which a refund of the said additional duty is claimed.
- (iii) documents evidencing payment of appropriate sales tax or value-added tax, as the case may be, by the importer, on sale of such imported goods.

The notification is, however, silent on the form of the documents—physical or electronic. Even if the documents are produced in soft copy, will that suffice the requirements of the said notification? This is where the provision of Section 4 of the Information Technology Act, 2000 comes into play. Section 4 overrides the provisions of any other law, thereby making the soft copies of documents legally valid. The CESTAT also had similar views in the case of *M/S. House Full International Ltd.*

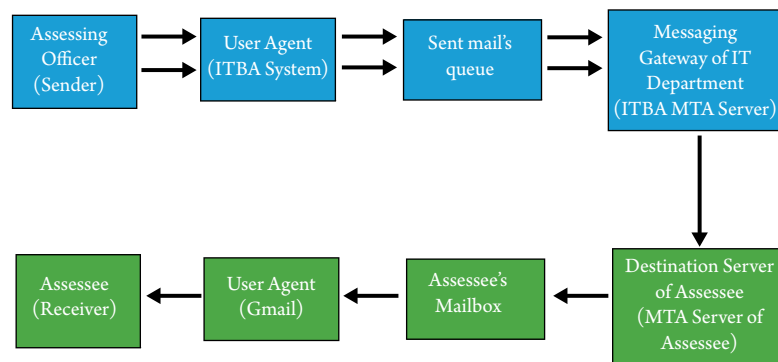
v. Commissioner of Customs (Import), Mumbai (10th November 2014).

Date and Time of Dispatch of Notice or Order

Nowadays, almost majority of the communications between the tax department and assesses are happening digitally through email, common portal, or SMS. Unlike physical delivery channels, communications through digital means involve numerous technical intricacies. One of the widely debated topics is the point of dispatch of a notice or order through digital modes because this is an important factor in the determination of the date and time of issuance of a notice or order, which is a *sine qua non* in any proceeding or litigation.

For determining the point of despatch, reliance must be placed on Section 13(1) of the IT Act 2000. It states, “Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.”

Let us consider the case of *Suman Jeet Agarwal vs ITO, Ward 61(1), & Ors (Delhi High Court, W.P.(C)-10/2022, 2022:DHC:3994-DB, dt.27.09.2022)* where the Honourable Court examined at what point does the notice for the purpose of Section 149 of the Income Tax Act 1961 enter a computer resource outside the control of the Department. The Department stated that it used the ITBA e-mail software system, which followed the SMTP model to send emails to the assesses. The following diagram illustrates the entire flow of the process of sending a notice via email:



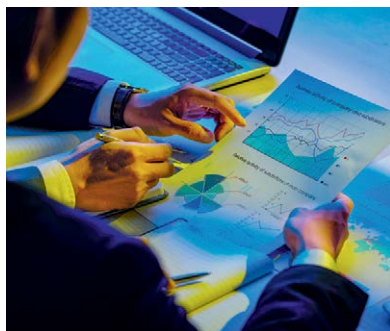
“ Receipt of notice or order by the party to whom it is addressed is a very important condition for proper service of the notice or order under tax laws. Otherwise, the entire proceeding under tax laws will be void. ”

Note: For the purpose of this illustration,

- double arrows indicated transmission between computer resources that were of the ITBA e-mail software system and therefore, within the control of the Department.
- single arrows indicated transmission between computer resources that were within the control of or used by the assessee.

It was held that –

- The dates and time of when the ITBA e-mail software system was triggered, and the notices left on the last ITBA server would be considered.
- The Department was the originator as per Section 11(c) of the IT Act of 2000. Hence, the dispatch occurred when it left the last MTA server of the ITBA and entered a computer resource that the Department had no control over, i.e., the MTA server of the e-mail service that the assessee was using.

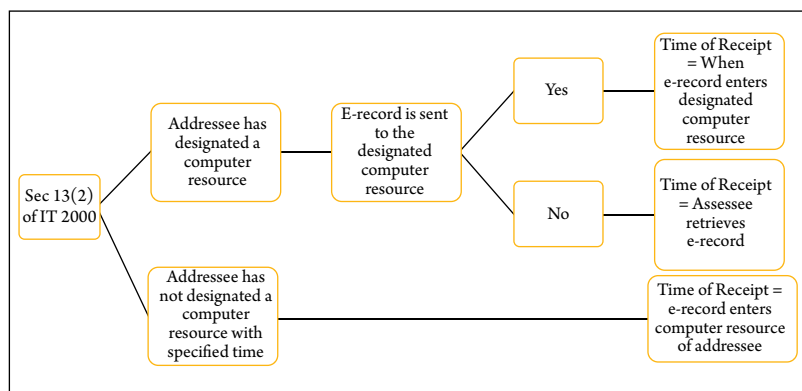


“Considering the remarkable changes in the technologies that facilitate both parties with better analysis, audit trial and seamless interaction, the legislature has made various provisions in the tax laws for the retention and maintenance of e-records.”

Date and Time of Receipt of Notice or Order

Receipt of notice or order by the party to whom it is addressed is a very important condition for proper service of the notice or order under tax laws. Otherwise, the entire proceeding under tax laws will be void.

Section 13(2) of the IT Act 2000 talks about the time of receipt of an e-record. The gist of the section is illustrated as below: -



Thus, the determination of the time of receipt is primarily contingent upon the availability of a designated computer resource of the addressee.

Accordingly, the following points merit attention-

- *Procedure, Formats and Standards for ensuring secured transmission of electronic communication - introduction of E-Proceeding for communication between the Income Tax Department and Assessee- reg. (CBDT vide point No. 13(n) of Notification No. 4/2017 dt 3rd April 2017)*, clarified that the registered account of the assessee on the e-filing website is deemed to be a computer resource designated by the assessee in accordance with Section 13 of the Information Technology Act, 2000 (No.21 of 2000).
- In the case of *M/s. Poomika Infra Developers vs. State Tax Officer (Madras HC, W.P. No. 33562 of 2024 pronounced on 09.04.2025)*, it was held that the common portal is a “designated computer resource” of both the department and the taxable person since a taxable person registered under the GST Act is given a unique login ID and Password to enable him to have access to the portal. Hence, for the taxable person, receipt would occur when it enters the common portal, i.e., when it is made available in the common portal.
- Explanation(g) to Sec 144B of the Income Tax Act, 1961 mentions that “computer resource of assessee”

shall include assessee’s registered account in the designated portal of the Income-tax Department, the Mobile App linked to the registered mobile number of the assessee, or the registered email address of the assessee with his email service provider.

In light of this discussion, it is worthwhile to consider the provisions of Section 13(4) of the Information Technology Act, 2000. It mentions that the provisions of Section 13(2) shall apply irrespective of the fact that the location of the computer resource and the place of deemed receipt of the e-record under Section 13(3) are different.

Place of Despatch and Receipt of E-record

Section 282 of the Income Tax Act, 1961, prescribes various modes of service of a notice or summon or requisition, order or any other communication under the Act. Further, Rule 127 of the Income Tax Rules, 1962, talks about the addresses to which such a notice, summons, requisition, order or any other communication under the Act may be delivered or transmitted. Sub Rule 2(b) of the said rule requires the communications to be delivered or transmitted electronically to email addresses.

As mentioned earlier, communication through electronic devices is a complex process involving numerous interconnected devices dispersed over various geographical locations, thereby obscuring the physical place of receipt and dispatch of the e-record. Thankfully, Section 13(3) and (5) of the IT Act, 2000, provide us with clear guidance on the above dilemma. The provisions are summarised as follows –

Determination of Place of Dispatch and Receipt as per Section 13(3):

- Place of dispatch of e-record = Place of Business of Originator.
- Place of receipt of e-record = Place of Business of Addressee.



Note: Section 13(3) starts with the words “Save as otherwise agreed to between the originator and the addressee...”. Hence, while determining the place of dispatch and receipt, the agreement between the originator and the addressee should be given first preference.

Determination of Place of Business as per Section 13(5):

- If the originator or addressee has more than one place of business, then the Principal Place of Business shall be deemed to be the place of business.
- If the originator or addressee has no place of business, then his usual place of residence shall be deemed to be the place of business.
- For body corporates, “usual place of business” means the registered office.

Retention of E-records

The Tax laws of India require proper maintenance of books of accounts and related records. Both the assessors and the department must comply with this requirement. Considering the remarkable changes in the technologies that facilitate both parties with better analysis, audit trial and seamless interaction, the legislature has made various provisions in the tax laws for the retention and maintenance of e-records.

For instance,

- Section 44AA of The Income Tax Act 1961, read with Rule 6F of the Income Tax Rules 1962, prescribes the list of documents that a certain class of assessee must maintain.
- Rule 56 of the CGST Rules 2017, Section 35 of the CGST Act 2017, allows a registered person to keep and maintain at his principal place of business accounts along with other particulars in a prescribed manner.
- Further, Rule 57 of the CGST Rules 2017 talks about the generation and maintenance of electronic records – back-up of e-records, production of e-records on demand, sharing of passwords, explanation for codes used for access, etc.

While discussing the maintenance of e-records, Section 7 of the IT Act 2000 merits equal attention. The provisions of Section 7 are mentioned as follows:

Sec 7(1)

Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information in the electronic form, if-

the information contained therein remains accessible so as to be usable for a subsequent reference

the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record

Further, the proviso to Section 7(1) provides that the clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received. Besides, Section 7(2) specifies the principle of *generalia specialibus non derogant*, highlighting that Section 7 is a general provision which can be overridden by any specific provision of any law requiring the retention of documents, records or information in electronic form. Hence, in simple words, if tax laws specifically require retention of e-records for any purposes, then the provision of Section 7 of the Information Technology Act 2000 will be inapplicable to such e-records for such purposes.

Effective Date of e-Gazette Notification

In the year 2015, the Government of India abolished the physical printing of Gazette notifications. The Ministry of Urban Development issued an Office Memorandum numbered No. O-17022/1/2015-PSP-1 dt. 30.09.2015 which, in relevant part, reads as follows: “In compliance with the provisions of Section 8 of the Information Technology Act, 2000, it has been decided in consultation with Department of Legal Affairs to switch over to exclusive e-publishing of the Government of India Gazette Notification on its official website with effect from 01.10.2015 and to do away with the physical printing of Gazette Notification. The date of publishing shall be the date of e-publication on official website by way of electronic gazette in respect of Gazette notification.”

The notification has a reference to Section 8 of the IT Act 2000, which deals with the publication of rules, regulations, etc., in the Electronic Gazette. Section 8 states - “Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette:

Provided that where any rule, regulation, order, bye-law, notification or any other

matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form."

A thorough reading of Section 8 and the Office Memorandum may lead to the belief that both focus on the "effective date". However, the precise time of the publication is as crucial as that of the date. The issue of figuring out the starting point for the enforceability of a notification in the electronic gazette was discussed by the Andhra Pradesh High Court in the case of *Ruchi Soya Industries vs Union of India* (W.P.No.4533 and 4534 of 2019 decided on 28 September 2019). It was held that a notification would come into force only after it was digitally signed by the competent official and uploaded and published in the official gazette. The Court opined that "The notification was ...published electronically on 6.3.2018... The notification was signed by Rakesh Sukul on 6.3.2018 at 19:15:13 + 05'30'. When notification needs to be signed digitally and only when the notification was uploaded and published in the Official Gazette, the same is made available for public." Similar views were also mentioned in case of *Adani Wilmar Limited vs Union of India* (Gujarat High Court, R/SCA/8057/2019, dt. 11.11.2022).

Way Forward

The IT Act, 2000, was one of the foundational pillars of the IT revolution in India. However, there exists a regulatory vacuum in addressing the governance needs of emerging technologies, particularly in the evaluation of automated decision-making systems and the oversight of contemporary digital enterprises.

The concepts of Cloud Computing, Digital currencies, Artificial Intelligence, Distributed Ledger Technology, and Smart contracts are no longer in vitro. They are widely accepted and implemented by business houses. These new technologies have improved the ease of doing business by leaps and bounds. However, there are certain risks associated with them that are getting unfurled day by day. Tax evasion opportunities and breach of data privacy are perhaps the most concerning.

Accordingly, stringent laws are imperative to regulate modern technologies and mitigate any probable risks. The Government of India has already taken some of the commendable steps in this direction as follows: -

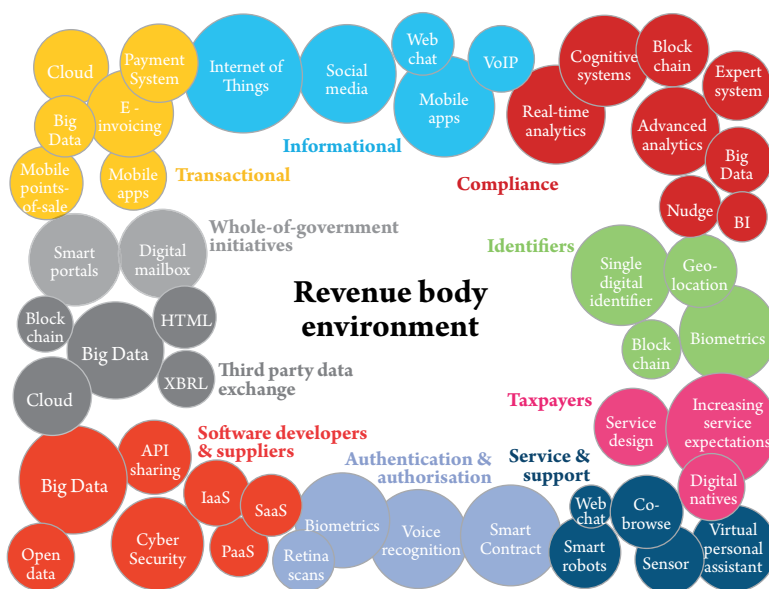
1. TDS on payment during transfer of virtual digital assets.

2. Inclusion of cloud-based storage in the definition of books of accounts in the IT Bill 2025.
3. The Promotion and Regulation of Online Gaming Bill, 2025.
4. The Digital Personal Data Protection Act, 2023.
5. National Data Governance Framework Policy, 2022 (Draft).
6. Proposal to replace the IT Act, 2000, with the Digital India Act, 2023.

Nevertheless, the true test lies in the effective harmonization of technology-related legislation with tax frameworks over time.

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Source: Australian Tax Office (ATO), 2016

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