'Ignorance of law is no excuse'- 'ignorantia legis neminem excusat'

I. INTRODUCTION

1. 'Ignorance of law is no excuse', the Latin maxim being 'ignorantia legis neminem excusat' which implies that it is not open to a person committing the breach of law to plead ignorance of law. Breach of law is omission to do something for which the law casts an obligation upon a person to do or doing something which the law does not permit. As Late Nani A. Palkhivala, once recalled what a cynic remarked, - "You mustn't enthrone ignorance just because there is so much of it."

2. Law is all pervading. Almost all your actions are regulated by law except a few. We have all sorts of law like personal, family, civil, criminal, revenue, commercial, taxation, public and private international law and so on. Law can be statutory, customary, moral or ethical, ecclesiastical etc. But it is well known that ignorance of any of these laws cannot constitute an excuse. You are not permitted to plead ignorance as a defense to escape the rigors of law. If it is so, it is very easy for any person to put forward ignorance as a defense even though he was actually aware of the law and its full consequences.

3. If an Indian goes to America and drives the car on the left side of the road or without putting on a safety belt, the police will fine him 50 dollars. If he argues that he was ignorant of the law, the police will not accept any excuses and he will be asked to pay the fine on the spot and then study the law at his convenience.

4. However, Ignorance of the law is no excuse was sadly illustrated to two Indian pilgrims from Gujarat. In their luggage they had 250 grams of poppy seeds (khaskhas) which resulted in their being arrested in Saudi Arabia. Most people would, however, agree that it is beyond human capacity to be well conversant with all the laws in our country.

5. In the British case of Regina v. Smith. After an appeal, the defendant was acquitted; his mistaken belief about the law was enough to excuse him.

II. ORIGIN OF MAXIM

1. It is generally accepted that the maxim had its origin in Roman law and there is a direct mention about the same in “The digest of Justicia” or Justinian's Code. It is stated therein that ignorance of fact may be excused but not ignorance of law. It is a
matter of common knowledge that English law is largely based on Roman law and thus naturally, the maxim crept into English Common law also.

2. The reasoning and justification for the aforesaid rigorous maxim that ‘ignorance of law is no excuse’ are the following:

(i) That in the first place, the law is in legal theory definite and knowable.

(ii) That even if invisible ignorance of the law is in fact possible, as indeed it is, the evidential difficulties in the way of the judicial recognition of such ignorance are insuperable.

(iii) That the law is in most instances derived from and is in harmony with the rules of natural justice as it is a public declaration by the State of its intention to maintain it by force.

The above principles were based upon the rights and wrongs which had in the past secured a place in the moral consciousness of the common man and the common law was in great part nothing more than common honesty and common sense of man. It had, therefore, been assumed that although a man may be ignorant that he is breaking the law, yet he knows very well in most cases that he is breaking the rule of right.

3. There are two types of wrongs in the eye of law. One is ‘Mala in se’ and the other ‘Mala Prohibita’.

‘Mala in se’ means the acts which are wrong in themselves. For example, all crimes are wrong in themselves.

‘Mala Prohibita’, on the other hand, means the acts which are not wrong in themselves. An act is not ordinarily wrong, but it is wrong because a prohibition has been imposed upon it by a human law. For example, But if any one receives cash loan of Rs. 20,000 or more he will be liable for penalty. These are wrongs because due to certain circumstances some prohibitions have been imposed by the State to regulate its subjects.

To quote an instance, if a legal heir on whom the estate falls is ignorant of the death of his ancestor, he is ignorant of a fact. But even if he is aware of the death, he is said to be ignorant of a law if he is not aware of his rights as the heir

III. DILUTION IN THE APPLICATION OF MAXIM

1. In those days the number of laws were quite few and thus can be easily remembered and understood. The number of laws or rules was very small and one can even count them. Therefore, in such a situation the rule may be justified. But please look at the present situation.

2. In a country like ours where majority of the people are illiterate, can those people be expected to know the law? Even the educated people are not expected to know each and every law of the land. Truly speaking even the lawyers do not know all the branches of law. The lawyers who practice in Civil Court may not know taxation laws and the lawyers who practice in taxation may not be aware of civil and criminal laws.
3. The eminent jurist, Mr. Justice H.R. Khanna of the Supreme Court,” The number of laws which are being enacted every year is so large that it baffles even men of law. How can we expect a lay citizen to keep abreast of the laws with a view to comply with the same?"

4. Viewed thus, there is a good justification for dilution of this rule. In fact courts in India, England and elsewhere refused to apply the maxim bluntly so as to render justice and to provide relief wherever it was found to be due applying the principles of justice, equity and good conscience.

IV. EVERY PERSON IS PRESUMED TO BE AWARE OF LAW?

1. The maxim “ignorance of law is not an excuse” is sometimes thought to be equivalent to the statement “Every person is presumed to be aware of the law”. But on a closer analysis it can be seen that both statements are not one and the same. There is absolutely no justification for the presumption that everybody is aware of all the laws in operation. It is a ridiculous presumption if not an arbitrary one. If everybody knows the law, then what is the necessity for the courts? If everybody knows the law then there is no need for consulting an advocate or a solicitor. We quite often find that District Court is reversed by the High Court which is in turn reversed by the Supreme Court. Is it not because the High Court was ignorant of the law?. If High court was aware of the law then why Supreme court reversed the judgement of the High court?. Thus it is crystal clear that High court was ignorant of the law. It is also equally possible that the Supreme Court itself may over rule or reverse its own decision and then it is quite clear that the Supreme Court was ignorant of the law while deciding the case at the first instance.

2. The maxim was considered by the Hon Supreme Court in Motilal Padampat Mills Ltd. v State of Uttar Pradesh reported in (1979) 118 ITR 326(SC). The Hon Court observed as follows
   “It must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law.”

3. CIT vs. Schell International [2005] 278 ITR 630 (Bom.) Assessee film producer was not aware of duty to file statement in Form No. 52AIn view of section 285B, the assessee-film producer was required to file a statement in Form No. 52A for each of the assessment years within 30 days from the expiry of the financial year. As the same was not filed by assessee, the AO imposed penalty under section 272A. The Tribunal accepting assessee’s explanation deleted the penalty.

4. CIT v. Bombay Automobiles [1980] 123 ITR 582 (AP). The Tribunal held that the assessee had agreed on a mistaken notion of law and hence the consent given by the assessee was not valid. On a reference by the Commissioner, the High Court confirmed the finding of the Tribunal.

5. The Full Bench of the Tribunal in Kaushal Diwan v. ITO [1983] 3 ITD 432 (Delhi)(TM) had come to grips with a matter in which the assessee had pleaded ‘ignorance of law as excuse’ for his failure to furnish information under section 285A of the Income-tax Act on the prescribed proforma and a penalty under the provisions of section 285A(2) was imposed upon him on the failure to comply with the said provision.
Per Shri P.V.B. Rao, Vice President

... It is trite law to mention that merely because there is a provision for levy of fine, fine must be imposed ... The plea that the assessee was not aware of the legal requirements cannot be brushed aside and he be made liable to a fine on the ground that ignorance of law is no excuse. The old theory that ignorance of law is no excuse does not hold good in view of the complexity of laws in modern days. It is impossible for any one let alone well informed people to know all the technicalities of law .... "

6. The Supreme Court has in the case of Swadeshi Cotton Mills Co. v. State of UP CTR(SC) 1974 page 9, held
"Every individual is deemed to know the law of the land. The courts merely interpret the law and do not make law. Ignorance of law is not an excuse for not taking appropriate steps within limitation."

Where during proceedings, counsel for the assessee contended that the assessee was of the age of 32 years in the assessment year under appeal and was of immature age and ignorant of law, the Tribunal observed that the assessee was Member of Parliament in the relevant year who later on became Chief Minister of Uttar Pradesh and because members of Parliament are makers of laws and therefore, could not be said to be ignorant of law, the contention that the assessee was of immature age and ignorant of law was of no relevance.

V. CONCLUSION

1. Excusing defaults on the ground of ignorance of law will be letting mischief flourish.

2. The stark truth is that escalating ignorance of /non-compliance with the law and proliferation of corruption are inherently in direct proportion to each other.

3. From the decided cases as referred to above it is clear that the Courts have exonerated the assessee when the assessee was totally ignorant of his legal obligation under the taxing statute and when he was under a mistaken notion of law or the legal position which implied that although he was in the know of a legal provision, he misunderstood the said provision or understood it contrary to the interpretation given by the Courts.

4. The study of the status of the maxim in India above clearly indicates that courts are reluctant to accept the maxim bluntly. It cannot be totally done away with. My submission is that in a fit case when circumstances clearly warrant it, the maxim need not be applied and a person may be excused for his ignorance.
| Section 272A(2)(c) (Failure To File TDS Return) | Commissioner of Income Tax Vs. Gordhanbhai Jethabhai (1994) 205 ITR 279 (Guj.)  
Superintending Engineer Vs. Income Tax Officer (1996) 54 TTJ (Jp) 608  
Royal Metal Printers (P.) Ltd.*V Additional Commissioner Of Income-Tax, (Tds) Range 3, Mumbai[2010] 37 Sot 139 (Mum.) |
|---|---|
Narotam Singh Mann Vs. Income Tax Officer (2004) 90 TTJ (Asr.) 683  
Harpal Singh Vs. Assessing Officer (2008) 12 DTR (Jd)(Trib.) 529  
| S.147 | Century Enka Ltd. Vs. Income Tax Officer & Ors. (1983) 143 ITR 629 (Cal) Ignorance of Law is Not a Defence For Reopening on Account of Change of Opinion. |
| Penalty under S. 271(1)(C), | V. Narayana Vs. Income Tax Officer (2004) 91 ITD 372 (Hyd.)  
Majorjit Singh Vs. Assistant Commissioner of Income Tax (2012) 17 ITR (Trib.) 183 (Chandigarh) Though Ignorance of Law is not an Excuse but where the Assessee had
bonafidely Acted on The advice of his Counsel In Respect of Issue of claim of exemption under particular provisions of the Act, the claim of the Assessee can at best be called a bonafide mistake.)

WG. CDR. Gurmukh Singh V. Income-Tax Officer, GSW 8(7) [2006] 154 Taxman 153 (Delhi) (Mag.)

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