JUDICIAL PROCEEDINGS BEFORE A DEPUTY COMMISSIONER OF INCOME TAX

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Introduction

In the hierarchy of Tax Administration, the Deputy Commissioner of Income Tax occupies a prominent position because a major part of the responsibility of execution of the Income Tax Ordinance, 1979, lies on his shoulders. Though he is assisted, guided and instructed by superior authorities and is legally bound to observe and follow the orders, instructions and directions of the Central Board of Revenue, yet he has been vested with powers to take independent, impartial and judicious decisions in a wider realm of functions assigned to him. In fact the whole of the Income Tax Ordinance and Wealth Tax Act revolves around him. The Deputy Commissioner of Income Tax who is essentially a part and parcel of the executive organ of the State is also a quasi-judicial authority but for carrying out some of the functions under the Income Tax Ordinance, 1979, he has been converted into a sort of limb of the judicial organ and all proceedings before him are deemed to be "judicial proceedings" within the meaning of section 193 and 228 and for the purposes of section 196 of the Pakistan Penal Code.

Judicial Proceedings - Scope:

The proceedings before a Deputy Commissioner of Income Tax were already treated as "judicial proceedings" under section 37 of the repealed Income Tax Act, 1922, which, among other things, provided that any proceedings before a Deputy Commissioner of Income Tax under chapter IV (mainly dealing with deduction at source, advance payments, returns of income, assessments, set off of losses, registration of firms, penalties for various defaults, rectification of mistakes, and enquiries and inspections) were deemed to be "judicial proceedings" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Pakistan Penal Code. However, the Income Tax Ordinance has broadened the scope and covered, not a few, but all proceedings (under the Ordinance) before a Deputy Commissioner of Income Tax within the meaning of "judicial proceedings" as envisaged under the said sections of the Pakistan Penal Code. Even the previous restriction of seeking prior approval of the Commissioner before enforcing the of a bank employee or compelling the production of the bank's books of account has been removed. However, a Deputy Commissioner of Income Tax cannot require a banking company to furnish information, statement, or accounts in respects to any client except with the prior approval of the Commissioner. Here, it would be worthwhile to refer to section 5 of the Banker's Books Evidence Act which reads as under:-

> "No officer of a bank shall in any legal proceeding to which the bank is not a party be compelled to produce any banker's books the contents of which can be proceeded under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause."

A plain reading of the aforesaid section 5 shows that it secures for bankers immunity from a Court's summons only in respect of their books. They do not enjoy

any immunity from liability to comply with a court's requisition for supply of information on specific points or information in respect of a particular assessee. Even in respect of books, the immunity given by this section is not unqualified. For "special cause", a Deputy Commissioner of Income Tax can call for bankers books and for that purpose can issue summons under section 148 of the Income Tax Ordinance, 1979 read with section 5 of the Banker's books Evidence Act.

Judicial Proceedings - Meaning:

Section 195(1) (b) of the Code of Criminal procedure, dealing with prosecution of certain offences/against public justice also treats proceedings before a Deputy Commissioner of Income Tax as "proceedings in any Court" as the term "Court" has been defined to include any Civil, Revenue, or Criminal Court. It has been held that a Deputy Commissioner of Income Tax is a Revenue Court within the meaning of this section of Cr. P.C.

The Income Tax Ordinance, 1979, does not provide for all offences against public justice but gives sanctity to the proceedings before a Deputy Commissioner of Income Tax in respect of the following:-

1) giving or fabricating false evidence punishable under section 193 of the P.P.C;
2) corruptly using false or fabricated evidence punishable under section 196 of the P.P.C; and
3) intentional insult or interruption to public servant sitting in judicial proceedings punishable under section 228 of the P.P.C.

Giving or Fabricating False Evidence - Meaning:

A person is said to give false evidence when he makes any statement, verbally or otherwise, which is false or which he either knows or believes to be false or does not believe to be true. This statement should, however, come from that person-

i) who is legally bound by an oath to state the truth, or
ii) who is legally bound by an express provision of law to state the truth, or
iii) who is bound by law to make a declaration upon any subject.

Similarly, a person is said "to fabricate false evidence" when that evidence is calculated to lead the competent authority to entertain an erroneous opinion touching any point material to the result of proceedings before him. Such person may have done this by any of the following methods which are the necessary ingredients of this offence:-

i) making any false entry in any book or record;
ii) making a document containing a false statement; or
iii) causing any circumstances to exist,

with the intention that the same my appear in evidence in a judicial proceeding and cause the authority (who has to form an opinion upon the evidence) to entertain an erroneous opinion.

Punishment for Giving or Fabricating False Evidence:

Section 193 of the Pakistan Penal Cod specifies a more severe punishment for

intentionally giving false evidence in any stage of a judicial proceeding or intentionally fabricating false evidence for the purpose of being used in such judicial proceeding as compared to the same offence committed in a non-judicial proceeding. The offence is punishable with imprisonment for a term which may extend to seven years besides a liability to fine. Intention, is, however, the essential ingredient in the constitution of this offence but the offence of fabrication of false evidence is committed as soon as fabrication is complete to be used in a judicial proceeding though such proceeding may not have actually commenced.

Apart from the punishment prescribed by the Pakistan Penal Code, the offence of concealing income or furnishing inaccurate particulars of income (which includes suppression of an item of receipt liable to tax, claiming any deduction for any expenditure not actually incurred and any act referred to in clauses (aa) to (e) of sub section (1) of Section 13) is also punishable with penalty upto two and half times of tax evaded under section 111 and by way of prosecution entailing imprisonment upto 5 years and/or fine under section 119 of the Income Tax Ordinance. A person making a false statement in any verification, in any return, or other document, furnished under the provisions of the Income Tax Ordinance can also be punished u/s 118 with imprisonment for a term which may extend to three years, or fine, or both.

Corrupt use of False or Fabricated Evidence:

Section 196 of the Pakistan Penal Code, which can be invoked by a Deputy Commissioner of Income Tax in relation to judicial proceedings before him, envisages a punishment with imprisonment for a term extending to seven years and an additional liability to fine for the offence of corruptly using or attempting to use as true or genuine any evidence which the person using it knows to be false or fabricated. The element of corruption and knowledge of falsity of evidence are, therefore, the main ingredients of this offence. The word "corruptly" occurring in this section is not used in the sense of 'fraudulently' or 'dishonestly'. The user may not be dishonest or fraudulent but if he does the act with the intent of gaining some advantage inconsistent with official duty or the rights of others or the act is designed to corrupt or prevent the course of justice it shall be taken as "corrupt" use of false or fabricated evidence. However, the word "corruptly" is used to denote that those whose duty it is, not to judge the credibility of evidence, but to submit it for the consideration of the judicial and other functionaries, on behalf of their clients, do not incur the penalties of using false evidence.

Intentional insult or interruption to Deputy Commissioner of Income Tax:

All proceedings under the Income Tax Ordinance before a Deputy Commissioner of Income Tax being judicial proceedings for limited purposes of the Pakistan Penal Code, any intentional insult or interruption to the Deputy Commissioner of Income Tax while sitting in any stage of judicial proceedings would be an offence under section 228 of the Pakistan Penal Code which reads -

> "Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

The object of the above section is to preserve the prestige and dignity of the

judicial officers and to punish a person who intentionally insults the officer administering justice. Insult or interruption to a Deputy Commissioner of Income Tax would be punishable if it is offered intentionally while the Deputy Commissioner of Income Tax is sitting for the disposal of proceedings under the Income Tax Ordinance, 1979, necessary interval between the conclusion of one case and the opening of another would also be a stage in a judicial proceedings.

Obstruction in the Discharge of Function:

The Income Tax Ordinance, 1979, does not provide for any separate prosecution for the offence of intentional insult or interruption to a Deputy Commissioner of Income Tax but Section 115 of the Ordinance prescribes a penalty not exceeding Rs.10,000/- for obstruction in the discharge of his functions under the Ordinance. However this penalty cannot be imposed by the officer himself but by the Commissioner of Income Tax. Like all other penalties the imposition of this penalty under the Ordinance would also be without prejudice to any other liability incurred under any other law in force which would mean that besides imposing penalty upto Rs.10,000/- prosecution can also be lodged against the offender under the Income Tax Ordinance for punishment with imprisonment upto a term of one year, or with both. The offence of obstructing a public servant in the discharge of his official functions was already punishable under section 186 of the Pakistan Penal Code (with imprisonment upto 3 months and fine upto Rs.5000/- or both) but the law-makers being conscious of the increasing incidents of such obstructions deemed fit to make a specific provisions in the Income Tax Ordinance providing for a penalty upto Rs.10,000/-. This was also because the provisions of the Pakistan Penal Code were seldom invoked due to cumbersome and costly procedure of prosecution.

This provision of the Income Tax Ordinance has been subjected to criticism from certain quarters mainly for the reason that, a Deputy Commissioner of Income Tax has been given the power to act as a judge in his own cause. Some people have found it unfair that the Deputy Commissioner of Income Tax may be the Victim, the Prosecutor and the Court at the same time and apply his own subjective standards to determine that the offence has been committed. Perhaps they ignore the provisions of Section 480 of the Code of Criminal Procedure wherein a judge imposing fine is "the Victim, the Prosecutor and the Court at the' same time" A Deputy Commissioner of Income Tax is also a "Court" and holds judicial proceedings under the Income Tax Ordinance, 1979, and there is no reason why obstruction in the discharge of his functions not be penalised by him like other judicial officers.

Improper or unlawful obstruction or resistance encountered in the discharge of his official functions can also be removed or overcome even by necessary force by a Deputy Commissioner of Income Tax as was held in a case before the Supreme Court of India wherein it was observed -

> "Where a power is conferred or a duty is imposed by statute or otherwise, and there is nothing expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, It is reasonable to hold that it carried with it the power of doing all such acts or employing such means as are reasonably necessary for such execution. If in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. If an

officer honestly believes that he is entitled to remove obstruction by force the mere fact that his view was mistaken would not make his acts malafide or disentitle him to claim that the acts done by him were done in the performance of official duty."

Compounding of Offences:

The Commissioner of Income Tax has been empowered to compound any offence mentioned in chapter XII of the Income Tax Ordinance, 1979 either before or after the institution of proceedings. Most of the offences against public justice being serious in nature, are not compoundable as specified in Schedule II to the Code of Criminal Procedure. Therefore, the Commissioner cannot compound the offences (relating to judicial proceedings before a Deputy Commissioner of Income Tax) punishable under section 193, 196 and 228 of the Pakistan Penal Code because these offences are treated in the said schedule to the Cr. P. C. as under :-

	Offences	Whether the Police may arrest without warrant or not.	Whether a Warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Whether compoundable or not.
1.	U/s 193 PPC giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant	Bailable	Not compounable.
2.	U/s 196 PPC using in a judicial proceeding evidence known to be false or fabricated.	-do-	-do-	-do-	-do-
3.	U/s 228 PPC Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	-do-	Summons	-do-	-do-

Trial of Offences:

Whereas all other offences punishable under chapter XII of the Income Tax Ordinance, 1979, are required to be tried exclusively by a Special Judge only upon a complaint made under the authority of the Commissioner of Income Tax as provided in Section 125 of the Income Tax Ordinance, the offences under section 193, 196 and 228 of the Pakistan Penal Code can be tried by the Court of Session (or some other competent Court) on the complaint of the Deputy Commissioner of Income Tax. However, section 480 of the Court of Criminal Procedure also provides that when the offence of intentional insult or interruption is committed in the view or presence of any Civil, Criminal or Revenue Court, then the Court itself can cause the offender to be detained in custody and sentence him to fine not exceeding Rs.200/- and, in default of

payment, to simple imprisonment for a term upto one month unless the fine is sooner paid. It would, therefore, appear that a Deputy Commissioner of Income Tax can himself take cognizance of the offence of intentional insult or interruption offered or caused to him while sitting in a stage of judicial proceeding and award punishment.

Assistance in the Discharge of Functions:

A Deputy Commissioner of Income Tax can always require the assistance of other officers of Customs, Central Excise, Provincial Excise and Taxation, Police and the Civil Armed Forces in the discharge of his functions under the Income Tax Ordinance, 1979. The officers of these departments are not only empowered to assist income tax authorities but are also required to render such assistance, although failure to give the required assistance is no offence under the Income Tax Ordinance, the provisions of section 187 of the Pakistan Penal Code can be invoked, which read as under:-

> "Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his Public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both."

Conclusion:

It is evident from the scheme of the Income Tax Ordinance, 1979 and the various instructions emanating from the Central Board of Revenue that although many of the discretionary powers of the Deputy Commissioner of Income Tax have been restricted because "exercise of such powers can at times be arbitrary and may be misused with the intention of favouritism, corruption or black mail". However, the powers of a Deputy Commissioner of Income Tax arising out of and in relation to "judicial proceedings" conducted by him have not been, and should not be, curtailed or restricted as these powers are seldom exercised and are not likely to create any air of harassment for honest law-abiding persons. In fact, there is a pressing need for encouraging the Deputy Commissioner of Income Tax and other competent authorities to acknowledge and recognize the importance, sanctity and purpose of "judicial proceedings" before them and to make the best use of their position and powers atleast against those who are hoodwinking the department and cheating the nation.