CHARGE OF INCOME TAX

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Entry No. 47 of Part I of the Federal Legislation List in the Fourth Schedule of the Constitution of Islamic Republic of Pakistan, read with Articles 77, 165, 165A and 279 provide the authority to impose any tax to be levied by the state on its subjects. Without this Constitutional cushion the state cannot impose any tax because the intention of the Constitution to provide freedom to acquire and retain assets (through which income is generated) by an individual may be defeated. The imposition of any tax, may thus come into conflict with the said right except that the right to acquire and retain any asset is also subject to any law in the land which may provide an authority to levy a tax on income. The charging sections of the Income Tax Ordinance 1979, derive their strength from the Constitution, wherein the above mentioned Articles' authority has been provided to the state to levy any tax either through the Federal or through the Provincial governments. Income Tax is included in the Federal Legislation List and is thus imposed by the Federal Government.

The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy; the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness is the legislative scheme defining

any of those components of the levy will be fatal to its validity. Thus in a nutshell, the subject is not to be taxed unless the charging section clearly imposes the obligation.

Further there are three stages in the imposition of a tax. First there is the declaration of liability that is the part of the statutes which determines which persons in respect of which property are liable. Secondly there is the assessment. Liability does not depend on assessment, that ex-hypotheses has already been fixed. But the assessment particularizes the exact sum which a person liable has to pay. Lastly comes the method of recovering i.e. if a person taxed does not pay voluntarily then what coercive measures can be adopted.

Thus the first part of a taxing statue contains the charging provisions, the second part containing the provisions for computation of tax and the third part contains provision for payment, recovery and collection of tax. In other words, the provision in the first part are the charging provisions and the provisions of the last two are the machinery provisions for computation and collection of tax.

Income Tax is annual in its structure and organization. Each Income year is a distinct unit of time for the purposes of assessment and the profits made or the liability of losses incurred before or after the relevant income year entirely immaterial in assessing the income of that year unless there is a statutory provision to the contrary. Section 9 & 10 of the Income Tax Ordinance impose charges of Income Tax, Super Tax and Surcharge. The chargeability of Income Tax has to be in accordance with and subject to the provisions of the Ordinance. The liability to Income Tax under the charging section 9 &10 is not ABSOLUTE, but is in accordance with and subject to the provisions of the Income Tax Ordinance 1979. if, therefor the effect of any other provision in the Ordinance is to take away liability, the effect will have to be given to it. For example, Second Schedule of Income Tax Ordinance grants full or partia exemption to many classes of income or classes of persons from levy of tax. Furthermore the income has to

be brought under any one of the heads of income u/s 15 and can be charged to tax only if it is so chargeable under the computing section corresponding to that head of income. In case of an irreconcilable conflict between the provisions of this section and any other provisions contained in the Ordinance the latter shall prevail to the extent of that inconsistency. Thus the charging provisions is not be read in isolation. It has to be read alongwith the other provisions contained in the Ordinance. However, the machinery provisions cannot be interpreted in such a way as to restrict the scope of the charging section. As a matter of fact it is expected to construe the machinery sections, in such a manner that charged to tax is not defeated.

The provisions of the Income Tax Ordinance relating to the charge on income apply in relation to a specific assessment year and the provisions of the Ordinance providing for the computation of the chargeable income (which includes taking into account permissible deductions in the computation of income chargeable under different heads) apply in relation to the relevant income year. For the purposes of income tax, each year in taken as a self contained accounting period and we can only take into consideration income profits and gains made in that particular year. There cannot be any possible concern with potential profits which may be made in another year any more than with losses which may occur in future. Thus under the express terms of the charging provisions, the subject of charge is not the income of the Assessment Year, but the income of the Income Year. However, it is possible to bring to tax income of different income years in the same assessment year under Section 9. The term 'Assessment Year' means the year in which the tax is quantified. In the assessment year the tax of the previous year is brought to charge. However, a point to be noted further is that the liability to pay tax does not depend on assessment, but on the Income Tax Ordinance. The assessment order only qualifies the liability which has already been created by the charging section. Moreover, the liability to pay income tax is a present liability. The liability becomes chrysalides on the last day of the income year corresponding to a particular assessment year.

The subject of the charge, thus, is the income of the income year, but the law to be applied is that in force in the assessment year, unless otherwise stated or implied. In case of an amendment to the Income Tax Ordinance it will apply to a case even if the income forming the subject of assessment was earned before the amendment came into force.

An other important element of section 9 is that the charge of tax is on every person. Thus the definition of expression 'person' given in Section 2(32) is very crucial, because it is with reference to the categories of entities specified in Section 2(32) that the liability to tax under the Income Tax Ordinance is determined. If a person is not capable of being considered as a, 'person' within the meaning of Section 2(32) then no liability can be attached to him. However, as the definition is inclusive, in case of difficulty a recourse may be made to the General Clauses Act to ascertain the meaning of the term 'person'. The term would thus include a minor or a person of unsound mind though assessment is made generally on his guardian or manager.

Under this provision of Section 37 of the Modarbas Companies & Modarbas Ordinance 1980, the income from Modarbas was exempt from tax. The charging sect on however, has been amended which For Section 1992 to bring the income from these institutions under the chargeability from the assessment year 93-94. However the chargeability starts after the end of three years from the commencement of the Modarba, if atleast 90% profits are distributed to the share holders.

Sub Section (2) of section 9 of the Income Tax Ordinance provides the authority to levy and charge any advance tax. Section 9 alongwith Section 10 provide the basis of chargeability. In Section 10 Super Tax and Surcharge are also included within the arnlsit of taxation. Section 10 may read as an extension of Section 9. It is similar to the previous Section, as that it operates on the same principle and

provides the assessing officer the authority to charge Super Tax and Surcharge wherever applicable.

The composition of income is in respect of the total income of the assessee and not on gross receipts. With this end in view the sections which deals with different heads of income contain specific provisions regarding permissible deductions and allowances and the taxable balance. Rebates, relief aggregation and set off are also dealt with separately in this regard. These computation provisions from an integrate part of the charging sections because whatever is taxable under the Income Tax Ordinance is capable of being processed by machinery of computation laid down by the ordinance for inclusions in the total income. However, before the charge on the total income is imposed, it must be ascertained that it is the total income referred to in section 11 dealing with scope of total income and moreover that is computed in the manner laid down in the Ordinance. If either of these two condition is not fulfilled the income will not be part of the total income that can be brought to charge. Further as the charge is expressly declared to be in accordance with and subject to the provisions of the Ordinance, full effect must also be given to the exemption from tax granted under various provisions of the ordinance.

It may be seen that the term 'Income' as used in the Ordinance is, a term of wide significance. In general it can not a periodical monetary return coming in with some sort of regularity or expected regularity from a definite source. But the multiplicity of forms that the income may person is beyond enumeration. Thus Income need not be the recurrent return from a definite source, though it is generally of that character. It may, for example, consist of a series of separate receipts as in the case of professional earnings. In this analysis, the question whether a particular kind of receipt is Income or not would depend for its answer on the peculiar facts and circumstances of the case. If the notice of the receipt and its source are not satisfactorily explained by the assessee, depending on the facts which are generally within his peculiar knowledge the assessing officer may legitimately presume

that the amount in question is an Income of the assessee from an undisclosed closed source. Income Tax Ordinance purports be tax this income. This income may either be on the basis of receipt or on the basis of accrual. The most significant element of charge ability, therefore is income which should be such as to constitute that 'income' under the ordinance whether real or artificial or it should be otherwise specifically exempted by the Ordinance.