THE INCOME TAX ORDINANCE 1979 - AN EPISTEMOLOGY

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INTENT OF THE INCOME TAX ORDINANCE

Every Statute is enacted for a specific purpose. The levy and collection of revenue is the main purpose of the Income Tax Ordinance. In addition to collection of revenue it has two other functions as well. First, equal distribution of wealth [hence progressive taxation i.e. higher the income, higher the rate of tax]. Secondly, it is used as an instrument of economic policies of the government. By exempting income from a certain economic activity it promotes that economic activity and on the other hand by levying heavy taxes economic activity may be affected adversely. The entire Income Tax Ordinance revolves around these three principles, i.e. collection of revenue, equal distribution of wealth and its use as an instrument of fiscal and economic policies.

CHAPTER AND SCHEDULES

Every Statute is divided into Chapters. Every Chapter deals with a particular subject. Income Tax Ordinance has fourteen Chapters and eight Schedules.

(a) Chapter-I relates to definitions, Chapter-II relates to Income Tax Authorities, Chapter-III to Charge of Tax, Chapter-IV to Computation of Income, Chapter-V to Allowances and Rebates, Chapter-VI to payment of Tax Before Assessment, Chapter-VII to Assessment of Total Income, Chapter-VIII to Tax Liability in Special Cases, Chapter-IX to Recovery of Tax, Chapter-X to Refunds and Tax Credits, Chapter-XI to

Penalties Tax, Chapter-XII to Offences and Prosecutions, Chapter-XIII to Appeals and Revisions, Chapter XIIIA to Settlement of Cases, Chapter-XIIIB to Directorate General of Inspection, and Chapter-XIV to Miscellaneous.

(b) **The First Schedule** consists of five parts which deal with rates of income tax, super tax, surcharge, certain rebates and rate of income tax for companies respectively.

The Second Schedule consists of four parts which relate to exemptions from total income, reduction in tax rates, reduction in tax liability and exemption from specific provisions.

The Third Schedule gives rules for computation of Depreciation Allowance.

The Fourth Schedule deals with rules for the computation of income from insurance business.

The Fifth Schedule Schedule consists of two parts and gives rules for computation of income from exploration and production of petroleum products and exploration and extraction of mineral deposits.

The Sixth Schedule consists of three parts dealing with Recognized Provident Funds, Approved Superannuation Funds and Approved Gratuity Funds respectively.

The Seventh Schedule deals with rules for the computation of relief from tax by way of credit in respect of foreign tax.

The Eighth Schedule gives rate of tax rebate on income from Export of Goods.

SECTIONS, SUB-SECTIONS, CLAUSES AND SUB-CLAUSES

The Ordinance is divided into a number of chapters, which further consist of paragraphs which are called Sections. Each Section deals with a particular topic, which in some cases is too lengthy to deal within one paragraph. Its various aspects are therefore dealt with in separate sub-paragraphs which are called sub-sections. For similar reasons, a sub-section is again divided into clauses, and clauses into sub-clauses. The relation between a sub-clause and clause is the same as is between a section and a sub-section. For example section 16 deals with computation of income under the head "salary". Sub-section (1) enunciates what type of receipts are to be included in salary income. Sub-section (2) defines the various terms used in sub-section (1). Clause (a) of sub-section (2) defines the terms "salary", clause (b) defines "perquisite", clause (c) defines profits in lieu of salary. As clause (b) defines the terms "perquisite", its sub-clause (i), (ii), (iii), (iv) and (v) delineate the items included in the term "perquisite". Thus sections, sub-sections, clauses and sub-clauses are various divisions, sub-divisions of the subject matter and are intended to make reference to these parts easy and succinct e.g.

Section 13(2) – means sub-Section 2 of Section 13.

Section 23(1)(viii) – means clause (viii) of Sub-section (1) of Section 23.

Section 10(2)(viii)(a) – means sub-clause (a) of Clause (viii) of sub-section (2) of Section 10

Section are indicated by ordinary figures 1, 2, 3, sub-section are also indicated by same figures 1, 2, 3, but within brackets e.g. (1), (2), (3) etc. ... . Clauses are denoted by Roman numbers i, ii, iii, iv, within brackets e.g. (i), (ii), (iii). Sub-clauses are denoted by letters a, b, c, d, within brackets e.g. (a), (b), (c) etc. At times clauses are denoted by letters within brackets like (a), (b), (c) etc. and sub-clauses are denoted by Roman numbers within brackets like (i), (ii), (iii) etc. However, clauses in Section 2 are indicated by figures in brackets as ordinary sub-sections are mentioned.

Since each chapter of the Ordinance deals with a particular subject, so if some new provision on the same subject is to be added, it is added in the same chapter in the form of a new section, sub-section, clause or sub-clause in the same chapter and while doing so if a section is to be added between existing sections, say between 59 and 60, it will be numbered 59A. If two sections are to be added the first will be 59A and the second 59B. Similarly, if sub-sections are to be inserted they will be numbered (1A), (1B) etc., clauses are numbered (ia), (ib) and sub-clauses as (aa), (ab), (ac) etc.

DEFINITIONS

Ordinarily the words and terms used in a statute have their ordinary dictionary meaning. But where a word or a term has been specifically defined in an Act or Ordinance, the special meaning assigned to that term replaces its ordinary meaning. For example the term "Deputy Commissioner" has very frequently been used in the Income Tax Ordinance, which ordinarily means chief executive of a district. However, as the term has been specifically defined in Section 2(17A) it means a person appointed to be a Deputy Commissioner of Income Tax under Section 4 and includes an Assistant Commissioner of Income Tax, an Income Tax Officer, a Special Officer and a Tax Recovery Officer.

Every enactment has a Section containing definitions of the terms and expressions used in that enactment. The words and terms defined in that section are applicable to the whole of the Statute. The words and terms so defined lose their ordinary dictionary meaning wherever they appear as a technical term in that Statute and acquire the meaning attributed to them by these definitions. In the Income Tax Ordinance Section 2 deals with definitions applicable to this Ordinance.

At times, certain expressions and terms are specifically defined within a certain section, sub-section, or clause etc. Such definition always indicate the area and scope of their applicability. In such cases, the special meaning assigned by such a definition is restricted to that section or clause in which they are so defined. In other sections of the statute the same word shall have its meaning assigned to it in section dealing with definition or if not defined, ordinary dictionary meaning as the case may be. For example, section 27(1) envisages that income from transfer of a capital asset will be chargeable under the head "capital gains". Sub-section (2) of Section 27 gives a specific meaning to the expression "Capital Asset" and "transfer". thus the term "capital assets" and "transfer" wherever it appears in Sections 27-28 and 29 has the said meaning, assigned to them by this definition. But if these terms occurs elsewhere in the Ordinance, they shall have their ordinary dictionary meaning or the meaning assigned to them in section 2 [if any]. If a term is defined in the main section of definitions and is again defined in another Section where its application is restricted to that very section sub-section or clause, the second definition will over-ride the general definition, in respect of that section or sub-section or clause for which that special definition is to operate. Thus the dictionary meaning is over-ruled by the general definition given in the beginning of the Ordinance and the general definitions are over-ruled by special definitions to the extent of area specified in the special definition.

However, a term defined in the Ordinance can also be used so as to convey its ordinary meaning. For example "Income" as defined in

section 2(24) has a very wide scope but the term has also been used in the Ordinance in its ordinary dictionary meaning.

The definitions are of two types:

1. Exclusive definition and
2. Inclusive definition.

EXCLUSIVE DEFINITION

This definition is restrictive in nature and as is apparent from its name excludes dictionary meanings and gives a specific meaning to a word or term that is why it starts with the word "..... means". For example, the definition of the word "resident". Ordinarily, the term means a person residing at a place. Since the term has been specifically defined in section 2(40), the meaning assigned to it by the definition completely replaces its ordinary meaning.

"2(40)(a) An individual, who-

(i) is in Pakistan in that year for a period of, or for periods amounting in all to, one hundred and eighty two days or more; or

(ii) is in Pakistan for a period of, or periods, amounting in all to, [ninety] days or more in that year and who, within the four years preceding that year, has been in Pakistan for a period of, or periods amounting in all to, three hundred and sixty five days or more; or .....".

By merely residing at a place, an individual would not become a "resident" unless he fulfills the conditions laid down in Section 2(40)(a). The special meaning completely replaces its ordinary dictionary meaning. The words or terms so defined have only such meaning as is assigned to it by the definition. It excludes all other meaning which the term or expression is capable of conveying.

INCLUSIVE DEFINITIONS

This definition is opposite of exclusive definition and instead of restricting the scope of meaning of an expression it expands it by including additional meaning to the dictionary meaning that is why it starts with the words "..... includes". An example of this type of definition is that of the word "person" as given in Section 2(32). It says "person includes an individual, a firm, an association of persons, a Hindu undivided family, a company, a local authority and every other artificial juridical person". A word thus defined retains its ordinary dictionary meaning and also acquires all the meaning assigned to it by its definition in the statute.

Sometimes, a definition is simultaneously exclusive as well as inclusive. An example of such a definition is available in section 2(6) which defines the term 'assessee'.

> "assessee" means a person by whom any tax, or any other sum of money is payable under this Ordinance, and includes-
>
> (a) every person in respect of whom any proceeding under this Ordinance has been taken for the assessment of his income or the income of any other person in respect of which he is assessable or of the amount of refund due to him or to such other person;
>
> (b) every person who is required to file a return of total income under section 55, section 72 or section 81; and
>
> (c) every person who is deemed to be an assessee, or an assessee in default, under any provision of this Ordinance."

PROVISO

The main provisions of Law are contained in the Sections, sub-section, clauses and sub-clauses of the Ordinance. However, when an

exception or departure is to be made from the main provision contained in a Section or sub-section etc. a proviso is added to it. Thus a proviso may be attached, either to a section, a sub-section, a clause or to a sub-clause. Generally a proviso changes the meaning or operation of the section, sub-section etc. to which it is attached. In most of the cases, it either restricts the meaning or operation of the main provision or enlarges it. For example, clause (c) of Section 144 of the Ordinance provides that the DCIT/IAC or CIT may require any person inducing a banking company to furnish such information or such statement or accounts or any information he specified in such notice. But the proviso to this clause restricts the scope of operation of this clause to the extent that in case of banking companies, DCIT will not issue such notice without the prior approval of Commissioner of Income Tax and in the case of other officer that of Central Board of Revenue.

EXPLANATION

The primary function of any "Explanation" is to specify the meaning of a word, term or a phrase used in any provision of law which may signify more than the meaning or interpretation. Often, the "Explanation" gives a totally artificial meaning to a word which it usually does not have. The role of an "Explanation" is more or less that of a "Definition". It is meant to create legal fictions i.e. artificially making a thing to be something which it actually is not, or for assigning either totally artificial meaning to certain terms or for enlarging or restricting the meanings of such terms. For example a trader indulges in speculation [Satta] as a part of his business but explanation attached to Section 22 which relates to computation of income from business enunciates down that such 'speculation business' shall be deemed to be a business distinct and separate from his other business. Here the explanation is creating a fiction which is contrary to the actual state of affairs. However, the device has most often been used in the Ordinance to assign specific meaning to various terms used in various provisions of the Ordinance. [See Explanations attached to Sections 12(4), 12(5), 24(i), 41(1)(f) etc. etc.].

LEGAL FICTION

Some times an enactment artificially avers a thing to be something which it actually is not. It may give a meaning to a word or a phrase which it generally does not have. It may affirm an event to have taken place and vice versa, or it may declare a thing or a situation to exist which actually does not exist and vice versa. The term often used to bring about this artificiality is "deemed". Whenever some thing is deemed to be, or exist or happen, then for the purposes of law such thing is as good as if it had actually existed or happened. The whole of Section 12 creates such legal fictions. Sub-section (1) says that salary shall be deemed to accrue or arise in Pakistan, no matter where-ever it is paid, if it is paid by Government or local authority in Pakistan to its employee. Here such salary income may not arise in Pakistan but is artificially considered to arise in Pakistan. The presumptive tax regime under sections 80B, 80C and 80CC is also an example of legal fiction where gross receipts and even imports [which actually is not a receipt but expenditure] have been deemed to be the income of the assessee and no allowance or deduction is allowed against such receipts.

ROLE OF CERTAIN EXPRESSIONS

(i) "Subject to the provisions of Section ..... OR Subject to the provisions of this Ordinance ....."

Where the provisions of any section are likely to clash with the provisions of an other section, it is necessary to clarify that what provisions of which section will prevail over the other. In such cases subordinate section commences with the words "subject to the provisions of section ...". For example, section 39 to section 44 to speak about tax rebate on account of certain investments [these provisions with the exception of section 42 are dormant for the time being] but total investment is restricted to a certain amount which is prescribed in section 45 so all these sections start with the words "subject to the provisions of section 45". Other example, section 9 [The charging section] speaks about charge of Income Tax, but as there

are so many provisions in the Ordinance which either exempt some income or give procedure and extent of tax ability and rates of tax. This provision starts with the words, "subject to the provisions of this Ordinance" ...

(ii) "Notwithstanding any thing contained in ....."

The role of the above expression is the reverse of the role of the expression "subject to the provisions of ....."This expression enables the provision to over-ride the other provisions mentioned in the expression. Sometimes such provision over-rides one or two other provisions and sometimes it is made to over-ride the whole Ordinance or any other Act or all other laws. Sub-section (2) of section 73 over-rides the provisions of sub-section (i). It is a case where one sub-section is made subordinate to another sub-section. Section 50(4) is a case where the provisions of the sub-section over-ride the provisions of the whole Ordinance. Thus if another provision is in clash with section 50(4), it will be section 50(4) which will prevail. Sometime the provisions of a section are made to over-ride the provisions of another enactment, for example, the provisions of section 77 over-ride the provisions of Companies Act, 1913. Under Companies Act, the liability of a share holder is limited to the amount invested by him in the company's share capital. But section 77 provides that every director and share holder owing not less than ten percent of its paid up capital shall be jointly and severally liable for payment of tax. Here the provisions of Companies Ordinance are subordinate to provisions of Section 77. A classical example of over-riding is contained in section 80C. Here the provisions of sub-section have been made to over-ride the provisions of not only the Income Tax Ordinance but all other laws also by saying "Notwithstanding any thing contained in an law for the time being in force, ..."."