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**Half Day Workshop on Prosecution under the Income-Tax Act  
on 19<sup>th</sup> October, 2019**

**Procedure of the trial in the Magistrate Court.**

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The income tax proceedings are known as deterrent proceedings, no police investigation or any other investigation agency is allowed to investigate under the Income Tax Act.

The Income Tax Act provides ample powers to its investigation authority as a power assigned to the police officer under the Police Act and under the Criminal Procedure Code, whereas the Income Tax criminal prosecution are conducted as per the Criminal Procedure code and Indian Evidence Act in the Magistrate Court. Section 280-A provides Special Court or Courts to entertain the Income Tax prosecution.

**Jurisdiction of the Court**

In every District, the High Court shall appoint Judicial Magistrate First Class, whereas the High Court in every Metropolitan area appoint Chief Metropolitan Magistrate or other Magistrate but Income Tax Trials are conducted by Metropolitan Magistrate First Class in the Metropolitan city.

To conduct the trial, there must be a complaint filed by the complainant. The Commissioner of Income -Tax may direct any person under his jurisdiction to file a complaint. "Complaint" means any allegations made orally or in writing to a Magistrate against any known or unknown persons under the law.

After filing the complaint, the Magistrate keep the said complaint for verification and after verification the process is issued against the person or persons known as accused person. The respective court thereafter issue summons to the accused and direct the accused persons to remain present in the court on the given time and date to answer the charges against such persons.

On receipt of the summons the accused has to remain present in the court, on attending the court the accused has to make an application for bail and also the accused has to execute PR bond (Personal Attendance Undertaking) to the Court. The accused thereafter can make an application u/section 205 of Cr.P.C. for exemption from personal attendance. Thereafter, it is just and necessary that the Accused person to go through the contents of the complaint carefully and can make an application for discharge before the trial commence. The ground for the discharge are as follows:

- 1) Discharge application can be made if the accused persons has crossed the age of 70 years or more at the date of filing of the complaint under the Income Tax Act.
- 2) If there is no sanction order u/sec.279 of Income Tax Act from the Commissioner of Income Tax before filing of the complaint.
- 3) If the accused person is dead after service of summons.
- 4) If the issues on the basis of which the complaint is filed and the said issue is decided by the CIT (Appeal) or by the Tribunal in favour of the Assesse and set aside the disputed question in favour of the assesse then the Accused can be discharged forthwith.

- 5) Section 279 (1A) provides that the Accused can be discharged if penalty has been reduced or waived by the Order u/s 273(A) of the Income Tax Act.
- 6) After order passed by the Settlement Commissioner granting immunity from the prosecution u/sec. 245-H of the Income Tax Act.
- 7) If the case is compounded by the Income Tax Authority, then in that case the Accused can be discharged.

It is pertinent to note that before commencement of the trial the lawyer for the prosecution and the advocate for the accused can produce any relevant documents by making application u/section 294 of the Cr. P.C. and call upon either side to admit or to deny the genuineness of each document produced by complainant or accused in the court.

It is necessary that every party to the trial can make application to the court calling upon either party for production of any relevant document in the court u/s 91 of the Cr. P.C. and the said documents can be used as evidence against each other during the trial.

Commencement of Trial - If there is no any application filed for the discharge by the accused then the court may peruse the contents of the complaint and the evidence adduced by the complainant in support of the complaint, the Court thereafter may go for trial.

What is trial- Trial means any hearing before the court in which the evidence is recorded and witnesses are examined.

The Magistrate court may conduct the trial by two ways - 1) Trial of summons cases 2) Trial by Warrant cases.

Summons cases - in which the charges are explained and plea is recorded, the nature of the offence are less serious and petty offences in which the punishment is less than 3 years. For example - Section 275-A and 275-B and 276-B.

Warrant cases – the offences are more of a serious nature, in which the punishment can be awarded more than 3 years and upto the life imprisonment. In the warrant triable cases the Magistrate shall frame charges in writing against the accused and then read and explain those charges to the Accused and shall ask whether the accused pleads guilty or not or to be tried and thus the trial commences.

Commencement of the Trial - The prosecution starts the trial by calling upon the complainant as the main witness and examine the complainant. During the examination various documents are submitted and produced by the complainant in support of the charges as evidence and those documents are marked as Exhibits. Thereafter the accused lawyer cross examines the complainant, during the cross examination the accused advocate may submit and produce any relevant documents in the court and get them marked as Exhibits, the exhibited document can be read as an evidence and the said documents can be held as an admissible evidence against either party in the trial before the Magistrate.

Section 278-E categorically imposed a condition that every prosecution for any offence under Income Tax Act requires culpable mental state on the part of the accused that the court shall presume such existence but the accused has to prove that no such mental state was in existence.

After examination of complainant the prosecution may examine any number of witnesses to support their case and at the same time the advocate for the accused may get an opportunity to cross examine the witness and thereby the accused lawyer get an opportunity to demolish / rebut the charges against the accused.

In the Income tax Trial, it is just and necessary and also important to examine the sanctioning authority who grants sanction for prosecution under section 279 of the Income Tax Act, if the prosecution failed to prove the valid sanction, then in that case the complaint can be dismissed even if there is substantial evidence against the accused.

After the examination and cross examination of various witnesses, the Magistrate may call upon the accused to examine any witness as a defense witness in support of his case. After completion of prosecution the case may be closed and the statement of the accused u/section 313 of the Cr.P.C. is recorded by the Magistrate. The recording of the statement u/s 313 is a mandatory, failing which the prosecution may suffer and the statement of the accused can be used by the court to take lenient view in favour of the accused.

Section 278AA of the Income Tax Act provides that punishment not to be awarded in certain cases that for any failure if assessee proves that there was reasonable cause for such failure and to that effect the accused must adduce the evidence stating that there was certain reasonable cause.

After recording of the evidence and the statement of the accused, the Court direct the Advocate for Accused and the complainant to complete their final arguments. After the arguments from the both the parties the Magistrate go through the contents of the complaint and evidence adduced in support of their defense, the court may conclude the trial by passing the necessary order of acquittal or awarding sentence to the accused in the said trial and thus the trial stands to be concluded.

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