# BUDGET PROPOSALS
# BY Karachi Tax Bar Association

## Section 124

## ASSESSMENT GIVING EFFECT TO AN ORDER.

**(a)** Under Section-section (1) it has been provided that the Commissioner shall pass an order within two year from the end of the financial year in which order of the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court as the case may be, is served on the Commissioner to give effect to any finding or direction in any order made by aforesaid forum. The period to give effect to the order is too long and would create unnecessary delay.
Proposal
It is therefore, proposed that words "within two years" be substituted by words "within one year".
**(b)** Similarly in case of making a new assessment order in consequence of order is set-aside by the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court, the limitation has been provided for making the new order within one year from the end of the financial year in which the commissioner is served with the order. The time frame is also too long, as matter is set-aside in whole or part, it would not take much time to resolve the issue.
Proposal

It is therefore proposed that words "within one year from the end of financial year" may be substitute with the words "within six moths from the end of financial year."
**(c)** Sub-Section 3 stipulate that where an assessment order has been set aside or modified, the proceedings may commence from the stage next preceding the stage at which such setting aside or modification took place. It is further stipulated nothing contained in this Ordinance shall render necessary the re-issue of any notice which had already been issued or the re-furnishing or re-filing of any return, statement or other particular which had already been furnished or filed. In our opinion re-issuance of notice in such proceeding is very necessary, otherwise, the tax payer may not be in position to clarify his position in such proceedings. Even otherwise it would be against the principle of natural justice. Non re-issuance of notice may defeat the purpose of fair proceedings.
Proposal
It is therefore proposed that words "the re-issue of any notice which had already been issued or" be deleted.

## SECTION 127.

## APPEAL TO THE COMMISSIONER (APPEALS)

Under the provisions of Sub-Section (2) of Section 127, it is mandatory on a tax payer to pay 15% of the amount of tax assessed as is in excess of the tax due under Section113 or 20% of the amount of tax for the immediate preceding tax year and where a person has not been assessed to tax for that year, 30% of the amount of tax under Section 113 which ever is less.

It is our considered opinion, that such precondition is ultra vires of the Article 27 and 227 of the Constitution and against the principle of justice under Islamic jurisprudence. . Our opinion has been vindicated by a recent judgment of Hon'ble High Court of Lahore in case reported as 2004 PTD 122 wherein the provisions of Section 129 (2) of he Income tax Ordinance, 1979 has been held to be ultra vires of the Constitution. We have been informed that learned Income Tax Appellate Tribunal, has also expressed a similar view.

Since sub Section (2) of Section 127 of the Income Tax Ordinance, 2001 puts similar precondition as contained in Section 129(2) of the Repealed Income Tax Ordinance, 1979,

In our considered opinion, provisions of Section 127(2)(b) should be deleted.

It is also proposed that amendments may be brought in for automatic stay of disputed tax demand, in view of the fact that outstanding tax entails heavy penalties.
SECTION 132 Sub-Section (2)

**DISPOSAL OF APPEAL BY THE APPELLATE TRIBUNAL.**

It has been provided under Sub-Section (2) of Section 132 that the Appellate Tribunal shall afford an opportunity of being heard to the parties to the appeal and in case of default by any of the party on the date of hearing, the Tribunal may if deem fit, dismiss the appeal in default or may proceed ex-parte to decide the appeal on the basis of available record. By this amendment, Rule 20 of Income Tax Appellate Tribunal Rules, 1981 has become redundant in view of sub Section 10 of Section 239 of the Income Tax Ordinance, 2001.

In fiscal laws, and more particularly law governing Income tax, it has been the practice to decide the matters on merits, as ITAT is the last fact finding authority and by virtue of Sub-Section (10) of Section 132, the decision of the Appellate Tribunal on an appeal shall be final.

In our considered opinion, the language used in Sub-Section (2) is defective and needs suitable amendment as it cannot be presumed that legislature intended to cause injustice. It is further stated that expression "default" in legal terminology necessarily imports an element of negligence or fault and means some thing more than mere non-compliance. See PLD 1967 SC 530.

**Proposal**

It is therefore, proposed that the said sub-section (2) may accordingly be amended in the following manner.

"The Appellate Tribunal shall afford an opportunity of being heard to the parties and in case of failure to attend the appeal by the person filing the appeal, the Tribunal may proceed ex-parte to decide the appeal on the basis of the available record."

## SECTION 133.

## REFERENCE TO HIGH COURT.

Section 66 of the Repealed Income Tax Act, 1922 and Section 136 of the Repealed Income Tax Ordinance, 1979, provided the procedure for referring the question of law arising out of the Appellate Order passed by the Appellate Tribunal to the High Court under advisory Jurisdiction. The said procedure continued till 1997 when the legislature through an amendment in Section 136 provided Direct Appeal to the High Court. The said procedure was discontinued in year 2000, and old procedure was restored. Under the Income tax Ordinance, 2001 old procedure has been retained. It is stated that it is considered opinion of this bar that Direct Appeal provided in Year 1997 to 2000 was probably made after considering the Judgment of Hon'ble Supreme Court of Pakistan in the case of Commissioner of Income Tax Versus Majestic Cinema, Karachi reported in PLD 1965 SC 379 where it was held that -
"It is that consideration should be given to the question whether the procedure of ascertainment of the proper law applying to cases arising out of imposition of the income-tax, by the method of reference under Section 66 of that Act is, in actual practice, entirely apt for the resolution of the questions of law arising, owing to the danger which appears in a fairly considerable number of cases, of there being produced through this process a distortion of the case both as to facts and law in its presentation to the High Court. It is in our view a matter for serious consideration whether a truer interpretation of the legal provisions could not be achieved by a process of direct appeal to the High Court from the decisions of the Tribunal, so limited however, that the determination of questions of fact is left within the exclusive responsibility of the Tribunal, subject to directions by the High Court, as to error of law or material error of procedure in such determination. ……"
It is not understandable, why the opinion of great justices have been ignored.

## Proposal

It is therefore, proposed that Section 133 be amended and a Direct appeal be provided after examining the observations of the Hon'ble Supreme Court in the case of Majestic Cinema.
SECTION 147

**ADVANCE TAX**

Under Sub-Section (4A) of Section 147 separate method has been provided for determination of amount of Advance Tax due for an individual tax payer, which is quarterly installment of tax assessed to the tax payer for the latest tax year as reduced by taxes paid in the quarter for which credit is allowed under Section 168 other than deduction under Section 149 or 155.

Sub-Section (1) excludes the income chargeable to tax under the head Capital Gain, Dividend, Royalty, Fee for Technical Services, Shipping and Air Transport Business, Income from property, Salary and incomes falling under Final Tax liability.

Very recently, the individual taxpayers have been saddled with tax burden on Incomes arising from yield from an account, deposit or a certificate under the National Saving Scheme or Post Office Saving Account includes PLS profit on bank deposits etc. On such new tax burden, the liability of Advance payment of tax automatically has become operative. The payment of tax including Advance payment has caused heavy financial burden on such Taxpayers.

## Proposal

In view of above circumstances, it is proposed that following amendment be made in Sub-Section (1) of Section 147.

### A new Clause (d) be inserted after clause ( c )

Clause (d) “In the case of an individual Tax payer, income chargeable to tax under Clause ( c ) of Sub Section (1) of Section 39.”

Secondly, it will be observed that credit of taxes deducted under Section 149 or 155 has been excluded in the component B in the Formula given under Sub-Section (4A), which has created unnecessary problems to the individual taxpayers. It is therefore, proposed that Component B of the Formula contained in Sub-Section (4A) be amended and the words occurring after comma “other than tax deducted under Section 149 or 155” be deleted.

Thirdly, it has been consistent demand of this bar that provisions of Estimate be introduced in Section 147. Since, the advance tax is either relatable to Turnover (in the case of a company or AOP) or on latest tax assessed (in the case of an individual taxpayer), the Estimate will facilitate the Department to recover actual tax due from the tax payer rather than tax which ought to be refunded subsequently.

Fourthly, the bar has received representations from its members, wherein it has been suggested that dates mentioned in sub-section (5) be extended. It is therefore, proposed that under Clause (a) to (c) the words “the 7th day” be substituted by the words “the 15th day”