

BUDGET PROPOSALS

BY Karachi Tax Bar Association

Section 68 Sub-Section 3.

FAIR MARKET VALUE

Under the provision of this Section the Commissioner has been empowered to determine the fair Market value of property or rent, asset, services, benefit or perquisite where price is not ordinarily ascertainable.

So far as fair Market Value is concerned the discretion to the Commissioner is without any parameters.

Proposal

It is, therefore, proposed that suitable parameters for valuation may be prescribed by the Central Board of Revenue in the Income Tax Rules, 2002 and for the purposes of Immovable properties, parameters defined under Rule 228 of the Income Tax Rules, 2002 be adopted and corresponding amendment be made in Rule 228 accordingly.

For the determination of Fair Market Value, if it is being determined by a Taxation officer acting under delegation by Commissioner, prior approval be made mandatory from the Commissioner or the Regional Commissioner as the case may be.

Section 79-Sub-Section (1) Clause (d)

Non-Recognition Rules.

Under Section 79(1) and under clause (d) no gain or loss shall be taken to arise where the asset is compulsorily acquired under any law. However a condition has been put that such gain or loss will not be taken if consideration received is reinvested by the recipient in an asset of a like kind within one year of the disposal.

Condition placed for reinvestment by receipt in an asset of a like kind, in our considered opinion is violative of Article 23 read with Article 8 of the Constitution of the Islamic Republic of Pakistan.

Proposal

It is therefore proposed that words "of a like kind" be deleted.

The period for reinvestment i.e. one year is too short. This may be increased to at least by two years.

Section 79-Sub-Section (2)

Non-Recognition Rules.

Sub-section (2) of Section 79 stipulates that provisions of Section (1) shall not apply where person is a non-resident. This seems to be discriminatory and could cause unnecessary hardship in the case of gift and transmission of the asset to an executor or beneficiary on the death of person and distribution of assets to non-resident members of an AOP or non-resident shareholder in the case of a company, on the event of liquidation of the company or dissolution of an AOP.

Reference can be made to clause (iv) of Para 31 of judgment in the case of Elahi Cotton Mills Ltd. vs. Federation of Pakistan reported on PLD 1997 SC 582 where it was held that:

(iv) That the legislature is competent to classify persons or properties into different rate of tax, But if the same class of property similarly situated is subject to an incidence of taxation which results in inequality amongst holders of the same kind of property, it is liable to be struck down on account of infringement of the fundamental right relating to equality.”

Proposal

It is, therefore, proposed that Sub-Section (2) be deleted.

Section 114.

RETURN OF INCOME

(a) Under the Income Tax Ordinance, 2001, the provisions containing the requirement for return of income is contained in section 114. Under sub-clause (iii) of clause (b) of sub-section (1), it has been provided that the persons required to furnish a return of income for a tax year where they own immovable property with a land area of 250 Square Yards or more located in areas falling in the limits of Metropolitan Corporation/Municipal Corporations, a Cantonment Board or Islamabad Capital territory or own any flat.

We are well aware that under the devolution plan, the Metropolitan/ Municipal Corporations have been abolished / dissolved and have been replaced with Local Governments functioning under the Provincial statutes.

Proposal

It is, therefore, proposed that necessary amendments be made in sub-clause (iii) of Clause (b) of sub-section (1) of section 114.

(b) Under Sub-clause (iv) of Clause (b) of Sub-section (1), a person who owns a motor vehicle (other than a motorcycle in Pakistan) is required to furnish a return of income. It has been experience that due to decrease in interest rates, various financial institutions including Leasing Companies have started leasing motor vehicles on a very low interest/lease rentals etc. Since the tax base has to be broaden, it would be necessary to include such class of person within the fold.

Proposal

It is, therefore, proposed that sub-clause (iv) of Clause (b) of section (1) of section 114 be accordingly amended.

“Clause (iv) owns a motor vehicle (other than a motorcycle in Pakistan) or has taken on lease a motor vehicle from any financial institution.”

(c) Under sub-clause (vi) of Clause (b) of sub-section (1) of Section 114, it has been provided that persons who have undertaken foreign travel in the tax year (other than by a non-resident person or any travel undertaken for the purpose of Hajj, Umra and Ziarat) are required to file the return of income.

Proposal

It is proposed that persons who have undertaken foreign travel in a tax year be liable to furnish a return of income irrespective of traveling for the purpose of Hajj, Umra and Ziarat. This will also broaden the tax base.

It is further proposed that amendment be made to exclude such persons, whose travel expenses are borne by a Tax Payer having a National Tax Number Certificate.

(d) To broaden the tax net, persons who hold a credit card should also be required to file return of Income.

Proposal

It is, therefore, proposed that after Sub-clause (vii), a new clause be added which is suggested as under: (viii) “is a holder of Credit Card where the monthly transaction exceeds 5,000 rupees”.

Section 119

EXTENSION OF TIME FOR FURNISHING RETURN AND OTHER STATEMENTS.

An applicant not granted the time requested for has no recourse for remedy; furthermore no time frame has been fixed within which the Commissioner has to respond to the applicant. A time frame is important due to the taxpayer’s liability for non-filing the returns by the due date. Natural justice demands that the taxpayer should have the right to approach a higher authority.

Proposal

It is therefore, proposed that right of representation before the Regional Commissioner, be introduced to redress the grievance of tax payers.

Section 119.Sub-Section (6)

According to sub-Section 6 extension of time granted under sub-Section 3 shall not for the purpose of charge of additional tax under subsection (1) of section 205 change the due date for payment of income tax under Section 137. The interpretation of this sub-section 6 plainly shows that addition tax imposition shall not stop running.

It is submitted that once extension is granted by the Commission, it cannot be said that Tax Payer has failed. Therefore even otherwise once the Commissioner grants time, it will be very harsh in genuine cases.

Proposal

It is, therefore, proposed that subsection 6 may kindly be deleted.

SECTION 122

AMENDMENT OF ASSESSMENT

Under Sub-Section 4A, the original limitation of reopening of assessment under Section 65 of the Repealed Ordinance was restored. However, it seems that limitation for the purposes of action taken under Section 66A of the Repealed Ordinance has not been restored due to some inadvertence. It is stated that on the point of time, when the Income Tax Ordinance, 2001 was promulgated, the assessments which could not be revised in view of provisions of Sub-Section (2) of Section 66A became past and closed transactions and had attained finality.

Proposal

It is, therefore, proposed that similar provisions be enacted for saving the original limitation as contained in Section 66A of the Repealed Ordinance, 1979.

Section 122A –

REVISION BY THE COMMISSIONER

Through an amendment vide Finance Act, 2002, section 122A was inserted providing a revisional jurisdiction to the Commissioner, which is conceptual para materia to section 138 of the repealed Income Tax Ordinance, 1979 with a difference that there is no provision for a taxpayer to apply for revision of the order. Initially while the Income Tax Ordinance, 2001 was being discussed and its initial draft was published for the opinion of general public, the relevant provision of law in respect of revision by the Commissioner by giving right to apply by a taxpayer was available.

Proposal

It is, therefore, proposed that appropriate amendment be made for giving right of applying for revision to the taxpayer.