

Appeals under the Income Tax Ordinance, 2001

By: Syed Hassaan Naeem

02 March 2017

KTBA Advance Professional Development Program 2016



Assessment



Assessment ?

The term "assessment" is derived from the term "assess" which has been defined in ordinary dictionaries as –

“to fix the amount of, as a tax: to tax or fine: to fix the value or profits of, for taxation (with at): to estimate, judge” – *Chambers English Dictionary*



Assessment - definition under the Ordinance

Income Tax Ordinance, 2001

Section 2(5) –

“assessment” includes provisional assessment, re-assessment and amended assessment and the cognate expressions shall be construed accordingly;

Horizontal lines for notes

Appeals

Horizontal lines for notes

What is an appeal?

The word “Appeal” is derived from the Latin word “appellare” meaning “to address”. The ordinary dictionary meaning is “to make an earnest or formal request or to call attention”

An appeal is an application for the judicial examination of the decision of any inferior court, by a higher court

An appeal is the right of entering to a Superior Court and invoking its aid and interposition to redress the error of the Court below

A complaint to a higher Tribunal, in which the error or injustice is sought to be corrected or reversed

Horizontal lines for notes

What is an appeal?

The right of appeal is a statutory right, created by statute defining its limits as well. It is settled proposition of law that if a statute does not confer a right of appeal, it does not exist



What is an appeal?

Most appeals arise on account of disagreement between the taxpayer and the tax collector regarding the quantification of taxable income and tax liability as well as against levy of default surcharge, penalties, etc.



What is an appeal? **Sections 127, 131 & 133**

There may also be disagreement over facts, figures or interpretation of law between the taxpayers and the tax collectors

To resolve such disagreements, the Ordinance lays down the procedure, which gives the taxpayers the right of appeal before the Appellate authorities which include Commissioner Inland Revenue (Appeals), Appellate Tribunal Inland Revenue, and the High Court



Who can appeal ?

The person to whom the assessment, amended assessment or other order has been issued has the right of appeal –

- ▶ In case of an individual, the individual himself;
- ▶ In case of an Association of Persons, any partner or member of the AoP;
- ▶ in case of a Company, the Principal Officer
- ▶ In case of a deceased individual, the legal representative of the deceased; and
- ▶ in case of an individual under legal disability or a non-resident person, his/ her representative

Time Limit

Appeal against order passed by	Time limit of filing appeal	To whom the appeal is made
Commissioner	30 days	Commissioner (Appeals)
Commissioner (Appeals)	60 days	Appellate Tribunal
Appellate Tribunal	90 days	High Court
High Court	120 days	Supreme Court

Where the appeal is not filed within the specified time, the Commissioner (Appeals) or the Appellate Tribunal, as the case may be, are empowered to accept such an appeal provided an application explaining the reasons for not filing the appeal in time are given, and are accepted as such

Appeal to Commissioner (Appeals) **Section 127**

Appeal to the Commissioner (Appeals) has been provided for under section 127. There is prescribed a complete procedure as to how the appeal is to be made and what are the pre-requisites

Commissioner (Appeals) has been defined under Clause (13A) of section 2, to mean –

“Commissioner (Appeals)” means a person appointed as a Commissioner Inland Revenue (Appeals) under section 208”

Appeal to Commissioner (Appeals) **Section 127**

Section 127 provides a right to appeal against the following orders -

- ▶ Section 121 (Best judgment)
- ▶ Section 122 (Amended assessment)
- ▶ Section 124 (Appeal effect order)
- ▶ Sections 143 & 144 (Non-resident ship/ aircraft owner/ charterer)
- ▶ Sections 161 & 162 (Default for not collecting/ deducting tax)
- ▶ Section 170 (Refund order)
- ▶ Section 172 (Representative of a non-resident)
- ▶ Section 182 (Penalty order)
- ▶ Section 205 (Default surcharge)
- ▶ Section 221 (Rectification)

How to lodge an appeal ? **Section 127**

The appeal should be filed by following the procedure prescribed which states that the appeal should be -

- ▶ On the prescribed form of appeal – (Rule 76)
- ▶ Be verified in the prescribed manner
- ▶ Stating the grounds of appeal
- ▶ Prescribed fee should be paid; and
- ▶ Lodged within the time limit provided

How to lodge an appeal ? **Section 127**

- Where the appeal is filed against an assessment order, admitted tax liability (under section 137(1) of the Ordinance) should have been paid by the taxpayer
- A copy of memo and grounds of appeal is required to be sent to the concerned Commissioner and a certificate to that effect should be enclosed with the appeal

Grounds of Appeal

Grounds of appeal are the points of disagreement in an assessment, amended assessment or any other order along with the reasons for disagreement or why the appellant believes that the assessment, amended assessment or the order is incorrect.

The grounds of appeal should be:

- ▶ Written in Urdu or English;
- ▶ Precise and serially numbered
- ▶ Should not be argumentative but precisely state the grievance/ cause of action
- ▶ Preliminary objections like limitation/ jurisdiction should be given priority

How to lodge an appeal ? **Section 127**

The following documents are to be submitted in duplicate with the Commissioner (Appeals) –

- (a) Prescribed form and grounds of appeal
- (b) Demand notice (in original) and impugned order
- (c) Challan (CPR) of appeal fee
- (d) Certificate confirming that appeal memo has been sent to the Commissioner
- (e) Power of Attorney or Vakalatnama

Who can attend the hearing **Section 223**

The following persons are authorized to represent the taxpayer in appeal –

- ▶ a relative of the taxpayer or the taxpayer himself;
- ▶ a current full-time employee of the taxpayer;
- ▶ an officer of a schedule bank with which the taxpayer maintains a current account or has other regular dealings;
- ▶ a legal practitioner entitled to practice in any Civil Court in Pakistan;
- ▶ a qualify accountant as per Rule 225; or
- ▶ an Income Tax Practitioner

Powers of the Commissioner (Appeals) **Sections 128 & 129**

The Commissioner (Appeals) is empowered to entertain new ground of appeal not taken earlier by the appellant

For this, an application may be made seeking permission of the Commissioner (Appeals) to raise the ground of appeal and should be filed before the hearing of appeal

If the Commissioner (Appeals) is satisfied that the new ground of appeal is very much related to the case and omission of not taking the ground earlier was not willful or unreasonable, he may accept the ground of appeal

A legal issue can be raised at any stage before the hearing of appeal is concluded

Powers of the Commissioner (Appeals) **Sections 128 & 129**

The Commissioner (Appeals) is authorized to admit any documentary material or evidence which was not produced during the assessment/ re-assessment proceedings only where the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from producing such material or evidence in the earlier proceedings

Powers of the Commissioner (Appeals) **Sections 128 & 129**

The Commissioner (Appeals) is empowered to grant stay from recovery of tax demand for an aggregate period of 30 days

A further stay for a period of 30 days can also be granted provided that the appeal shall be decided within the aforesaid extended period of 30 days

The Commissioner (Appeals) is also empowered to enhance the amount of assessment or reduce the refund, after giving a notice to the appellant of being heard

Preparing, conducting and arguing the appeal

While preparing the grounds of appeal, all the facts should be thoroughly examined. All important aspects should be noted down, the reason of disagreement/ disallowance should be highlighted and all the evidences should be in place to support the case

Unless you have command over the facts, you will not be in a position to apply the law and to find the relevant case law that is on all fours of the case

Preparing, conducting and arguing the appeal

It is preferable to prepare and submit written arguments before the Commissioner (Appeals)

The written arguments should contain a summary of the impugned issues. The issues should be clearly expressed and have clarity of the views canvassed either on facts or law. The language used should be polite, courteous and respectful

The historical back ground of the case should be incorporated and the issues should be discussed by firstly mentioning the reasons taken by the assessing officer and then controverting them with the facts of the case and with relevant law

Preparing, conducting and arguing the appeal

Alongwith the written submissions, the documents relied upon (details, evidences, etc.) and the case law referred to should be submitted

It is advisable that relevant excerpts on which emphasis is laid are highlighted so that these are noticed by the Commissioner (Appeals)

Where the facts of the case demand that the case record should be examined, the Commissioner (Appeals) may be requested to call for the case record

Books of account and other details, if warranted, may also be submitted for examination though it is the discretion of the Commissioner (Appeals) to examine such documents or not

Burden of Proof

Section 136

The burden shall be on the taxpayer to prove on the balance of probabilities where it has filed an appeal -

- ▶ In case of an assessment order, the extent to which the order does not correctly reflect the taxpayer's tax liability for the tax year
- ▶ In case of any other decision, that the decision is incorrect

Appeal to Appellate Tribunal

Section 131

It is the second forum of appeal and is said to be the final fact finding authority

If the taxpayer is not satisfied with the order of the Commissioner (Appeals), he can file a further appeal with the Appellate Tribunal. Likewise, the Commissioner can also file an appeal with the Appellate Tribunal if he is not satisfied with the decision of the Commissioner (Appeals)

Reference to High Court

Section 133

If either the taxpayer or the Commissioner is not satisfied with the decision of the Appellate Tribunal, a Reference can be made to the High Court only on points of law arising from the order of the Appellate Tribunal

The High Court, upon hearing a Reference under this section, shall decide the question of law and pass the judgment specifying the grounds on which such judgment is based and the Appellate Tribunal's order shall stand modified accordingly

Appeal to Supreme Court

An appeal can be filed before Supreme Court against any judgment of the High Court delivered on a Reference made on a question of law framed under section 133 or in any other case (like a CP) which the High Court certifies to be a fit case for appeal to the Supreme Court

The Supreme Court itself can also grant permission to refer the case to them.

The decision of the Supreme Court is final and is binding on all other courts (Article 189). It cannot be challenged further



Thank You
