

KTBA'S Advance PDP 2019

**Income Tax Audit and
Assessment -Case
Study**

By

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- Section 177 – Selection for audit by the Commissioner
- Section 214C - Selection by the FBR through random or parametric computer balloting.
- Both sections 177 and 214C are independent and both i-e Commissioner as well as Board are empowered to order for audit.
- Explanation in section 214C and 177 further clarified that both authorities can exercise powers for audit

- Latest position of litigation on the issue of selection for audit:-
- Single Bench decision in Chenone Stores' Case
- The CIR has no power to select for audit, in the presence of FBR's power u/s 214C.
- Single Bench decision in Kohinoor Sugar Mills' Case
- The CIR has independent power to select for audit, under Section 177, in presence of FBR's power u/s 214C.

- ICA 855 of 2014 Dt 17-11-2017 [FBR etc. Vs M/s Chenone Stores Ltd] Lahore High Court judgment
- **Main points** of the judgment in ICA 855 of 2014 Dt 17-11-2017:-
- Discretion u/s 177 should not be used to call a taxpayer consecutively to meet budgetary targets of collecting tax.

- In section 177(7) the legislature has authorized audit of a taxpayer in the next and following tax years but only where there are reasonable grounds for doing so. These reasonable grounds need to be confronted, in addition to the reasons for selection required under the first proviso.
- Legislature deprecates, as a rule, selection or calling for record of a taxpayer every year.
- Calling for record in the next or following year should be in exceptional circumstances on very sound reasons

Remedy to frequent audit selections by the CIRs

- The CIRs apply provision of 177 every year and creates hardship
- Clause (105) of Part IV of Second Schedule inserted through F.A.2018 imposed bar for selection of audit u/s 177 and 214C for next three years.
- If necessary CIR may seek Board's approval for exemption from this bar.

Automatic selection of cases for audit

- Section 214D provides for automatic selection of a case for audit when taxpayer files return late / after due date.
- This provision created capacity issues for workforce of FBR
- Meanwhile the late filers were entitled to enjoy all benefits of ATL being filer.
- Through F.A 2018 section 214D deleted,
- And new section 182A restricts entitlement of ATL to filers filing returns within due date ONLY.

Automatic Audit Closure Tax Year 2015, 2016, 2017

- Through section 214E introduced by Finance Supplementary (Amendment) Act 2018, a taxpayer may opt for closure of automatic selection of audit U/s 214D in the following manner:-

Salary /FTR cases/ NIL Turnover cases	Loss or BTL income cases	Taxable income case
Pay penalty by 31-01-2019. Subsequently penalty for salaried individuals with or without profit on debt/dividend income cases, was waved off	File revised return by 31-01-2019 by paying 2% tax on turnover	File revised income tax return by 31-01-2019 by paying 25% higher tax than the tax paid with return

Know your rights:-

- On conclusion of audit the DCIR has to allow opportunity u/s 177(6) before embarking upon amendment of assessment proceedings u/s 122.
- In the decision reported as **[(2015 PTD (Trib)1242)]** [CIR, RTO, Hyderabad Vs Dr Muhammad Azeem Almani] and many other cases the Tribunal has been pleased to annul the order passed by the DCIR u/s 122(1) / (5) without allowing opportunity u/s 177(6) of the Ordinance.

- In the notice u/s 122(9) of the Ordinance the DCIR can only confront the definite information acquired by him through audit or otherwise. He cannot seek information, documents, record, and evidences in the notice u/s 122(9) of the Ordinance. If he does, that means he has not acquired any definite information from audit. You can always challenge any such attempt on part of the DCIR both before him and before the appellate authorities.

Can a taxpayer's income tax affairs be called for audit more than once in a tax year?

> **No**

⦿ **2011 PTD 1558 (HC Kar) [M/s Shahnawaz Ltd Vs Pakistan]**

⦿ *“Once an audit has been called, in relation to a taxpayer, and is being or has been conducted, or is abandoned by the Department on its own volition ---, then the taxpayer cannot be vexed again by being selected a second time for an audit for the same tax year. --- In such a situation, the vested right of the taxpayer to be selected for audit has become a past and closed transaction*

Timeline for completion of audit

- ◎ SCP in case CIR v/s Allahdin Steel 2018 PTD 1444 held:-
 - > To finalize audit within timeframe of audit policy
 - > Breach of timeline should be avoided at all cost
 - > However Board by recording plausible reasons may extend timeline on case to case basis

TYPES OF ASSESSMENT

- Deemed Assessment Sections 120(1), 169(3)
- Best Judgment Assessment Section 121
- Amended Assessment Section 122
- Amended assessment on revision of return by the taxpayer. Section 122 (3)
- Amended assessment on the basis of definite information acquired from audit or otherwise Section 122 (5)

● **If the assessment order is erroneous and prejudicial to the interest of revenue.**

Section 122 (5A)

● **Provisional Assessment**

Section 123

● **Consequential Assessment**

Section 124 (1)

● **New Assessment**

Section 124 (2)

● **Modification Assessment**

Section 124A

Case Study

- Tax Year 2016
- Status of the tax payer A private Limited company.
- Nature of Business Operating satellite TV channel. Producing news and entertainment programs.

- Facts of the case
 - > The taxpayer did not file return for the tax year 2016 in time
 - > Taxpayer applied for extension of time. First on 01-01-2017 for 30 days. Then on 01-02-2017 for another 30days
 - > The CIR did not dispose of any of the applications. Thus extension was neither allowed to the taxpayer nor rejected.
 - > The taxpayer eventually filed return on 27-02-2017
 - > The DCIR issued notice u/s 182(2) for levy of penalty for late filing of return on 27-02-2017 instead of 31-12-2016.

- > The AR of the taxpayer contended that since applications filed by the taxpayer were neither accepted nor rejected i.e were not disposed of by the CIR therefore the extension sought is deemed to have been allowed and no penalty is warranted.
 - > The DCIR however imposed penalty and passed a penalty order.
- Had you been the counsel for the taxpayer what would have you advised to the taxpayer:-
- > Pay the penalty for late filing of return which is established because of non disposal of applications for extension.
 - > File appeal before the CIR(A).

- While penalty order was hanging in the balance. The DCIR issued letter intimating the taxpayer that its case has been picked up for audit u/s 214D through automatic selection process.
- What would be your advice to the taxpayer.
 - > Cooperate in audit.
 - > Fight to avoid audit because section 214D does not apply to the case of the taxpayer as applications filed by the taxpayer for extension of time were not disposed off by the Department.
 - > Department cannot take advantage of its own wrong.

- ◎ What would be the impact on the proceedings u/s 214D if CIR (A):-
 - > Decides your appeal in respect of penalty for late filing of return in your favour.
 - > Decides your appeal in respect of penalty against you.

2013 PTD 387 (HC Kar) (Case of General Tires)

117 117 Tax 527 HC Kar) (Case of Independent News Papers Corp.)

Thank You!