



Appeals under the Income Tax Ordinance, 2001

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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;

Appeals

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 sub-ordinate court, by a higher court

An appeal is the right of entering 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

What is an appeal?

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

Appeal is continuation of assessment as held by the Hon'ble Supreme Court of Pakistan in 1992 PTD 1681 – CBR V/s. Chanda Motors. Accordingly assessment would be completed when all forums have been exhausted

What is an appeal?

Most appeals arise on account of disagreement between the taxpayers and the tax collectors regarding the quantification of taxable income and tax liability as well as 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 ?

Sections 127 & 131

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 (AoP), 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 to file appeals

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	60 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 Appellate Authority

Sections 127 & 131

There is prescribed a complete procedure as to how the appeal is to be made to the Commissioner (Appeals) and before the Appellate Tribunal; and what are the pre-requisites

Appeal to Commissioner (Appeals)

Section 127

Section 127 provides 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
- ▶ A brief on the facts and circumstances of the impugned issues
- ▶ 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

Grounds of Appeal

Grounds of appeal are the items of disagreement in an assessment or any other order along with the reasons for disagreement or why the appellant believes that the order appealed against 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 file the 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) CPR of appeal fee
- (d) Certificate regarding date of receipt of impugned order
- (e) Certificate confirming that appeal memo has been sent to the Commissioner
- (f) Power of Attorney or Vakalatnama

Powers to grant stay

Sections 128

The Commissioner (Appeals) is authorized to grant stay to the appellant from recovery of tax demand for a period not exceeding 30 days in aggregate. This can be extended for further 30 days provided that the appellate order is passed within the said 30 days

An option is however, available to the taxpayer to pay 10% of the impugned tax demand alongwith filing of appeal, which would result in barring the Commissioner to initiate recovery proceeding till the decision by the Commissioner (Appeals)

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)

How to file the Appeal

Section 131

The following documents are to be submitted in duplicate with the Appellate Tribunal –

- (a) Prescribed form and grounds of appeal
- (b) Copy of first memo and grounds of appeal
- (c) Appellate order passed by the Commissioner (Appeals)
- (d) Copy of assessment order/ order in appeal
- (e) CPR of appeal fee
- (f) Certificate confirming that appeal memo has been sent to respondent
- (g) Power of Attorney or Vakalatnama

Powers to grant stay

Sections 131

The Appellate Tribunal is authorized to grant stay to the appellant from recovery of tax demand for a period not exceeding 180 days

According to a recent amendment, after the period of 180 days expires, the Commissioner is empowered to initiate recovery measures option even in cases where a stay granted by the Appellate Tribunal is available

Powers of Appellate Authority Sections 128,129 & 131

The Appellate Authority is empowered to entertain new ground of appeal not taken earlier by the appellant

For this, an application may be prepared seeking permission of the Appellate Authority to raise the additional ground of appeal and filed before the hearing of appeal

If the Appellate Authority is satisfied that the additional 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 additional ground of appeal

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

Powers of Appellate Authority Sections 128, 129, 131 & 132

The Appellate Authority is authorized to admit any documentary material or evidence which was not produced before the Commissioner only where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from producing such material or evidence in the earlier proceedings

Powers of Appellate Authority Sections 128, 129, 131 & 132

The Appellate Authority is also empowered to enhance the amount of assessment or reduce the refund, after giving a notice to the appellant of being heard

Who can attend the appeal hearing

Section 223

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

- ▶ a relative of the taxpayer or the taxpayer himself;
- ▶ a current full-time employee of the taxpayer;
- ▶ an officer of a scheduled 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;
- ▶ an accountant; or
- ▶ an Income Tax Practitioner

Preparing, conducting and arguing the appeals

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 supports your case

Preparing, conducting and arguing the appeals

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

The written arguments preferably 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 appeals

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

It is advisable that the relevant excerpts on which emphasis is laid are highlighted so that these are noticed by the Appellate Authority

Where the facts of the case demand that the case record should be examined, the Appellate Authority 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 Appellate Authority 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
- ▶ In case of any other decision, that the decision is incorrect

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 cannot be challenged further

Thank You