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# Income Tax

## Audit and Assessment

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# Topics

- **Audit of Income Tax Affairs**
- **Assessment and Amendment of Assessment**

# Audit

## “Audit”:

The term audit has neither been defined in the Income Tax Ordinance 2001 nor in the General Clauses Act. However, the term defined in various dictionaries and judicial pronouncements means:

- a) to make an official , systematic examination of accounts
- b) inspection and verification, by Tax Authorities, of a taxpayer’s return or **other transactions possessing tax consequences. Systematic inspection of accounting records involving analysis, tests and confirmations.**
- c) is a systematic and meticulous scrutiny of accounts with reference to the receipts and disbursements and vouchers and allied matters and submission of a report surveying the final outlay and highlighting the lapses or infirmities in the maintenance of accounts or utilization of funds. The report submitted by the auditor on an in-depth probe into the transactions with reference to accounts and other matters is expected to mirror the correct state of affairs.

{(A.S. Sharma. V. Union of India  
(1988) 175 ITR 260(A.P)}

# Audit

## “Selection for audit by the Board – Section 214C”:

- 1) The Board may select persons or classes of persons for audit of Income Tax affairs **through computer ballot which may be random or parametric as the Board may deem fit.**
- 2) The Board shall keep the parameters confidential.
- 3) Audit of Income Tax affairs of persons selected by the Board shall be conducted as per procedure given in section 177 and all the provisions of the Ordinance, except the first proviso to sub-section (1) of section 177, shall apply accordingly.
- 4) The Board shall be deemed always to have had the power to select any persons or classes of persons for audit of Income Tax affairs.

# Audit

## “Selection for audit by the Board – Section 214C”:

- 5) The powers of the Commissioner under section 177 are independent of the powers of the Board and nothing contained in section 214C restricts the powers of the Commissioner to call for the record or documents including books of accounts of a taxpayer for audit and to conduct audit under section 177.

# Audit

## “Selection for audit by the Commissioner Inland Revenue – Section 177”:

- 1) The Commissioner Inland Revenue may conduct audit of income tax affairs under section 177.
- 2) Before selection and audit proceedings under section 177, the Commissioner is required to obtain approval of the Board.
- 3) The powers of the Commissioner under section 177 are independent of the powers of the Board under section 214C and nothing contained in section 214C restricts the powers of the Commissioner to call for the record or documents including books of accounts of a taxpayer for audit and to conduct audit under this section.



# Audit

## “Audit proceedings by the Commissioner – Section 177”:

- 1) After selection for Audit, either by the Commissioner or the Board, the Commissioner may call for any record or documents including books of accounts maintained under the Ordinance or any there law for the time being in force for conducting audit of the income tax affairs of the person.
- 2) Where such record or documents have been kept on electronic data, the person shall allow access to the Commissioner or the officer authorized by the Commissioner for use of machine and software on which such data is kept.
- 3) The Commissioner or the officer may have access to the required information and data and duly attested hard copies of such information or data for the purpose of investigation and proceedings under the Ordinance in respect of such person or any other person.

# Audit

## “Audit proceedings by the Commissioner – Section 177”:

- 3) The Commissioner may, after recording reasons in writing call for record or documents including books of accounts of the taxpayer and the reasons shall be communicated to the taxpayer while calling record or documents including books of accounts of the taxpayer.
- 4) Where the taxpayer is selected for Audit through computer balloting under section 214C, the Commissioner is not required to record the reasons for calling for documents.
- 5) The Commissioner shall not call for record or documents of the taxpayer **after expiry of six years from the end of the tax year to which they relate.**
- 6) After obtaining the record, the Commissioner shall conduct an audit of the income tax affairs (including examination of accounts and records, enquiry into expenditure, assets and liabilities) of that person or any other person and may call for such other information and documents as he may deem appropriate.



# Audit

## “Audit proceedings by the Commissioner – Section 177”:

- 7) After compilation of the audit, the Commissioner shall, after obtaining taxpayer’s explanation on all the issues raised in the audit, issue an audit report containing audit observations and finding.
- 8) After issuing the audit report, the Commissioner may, if considered necessary, amend the assessment under sub-section (1) or sub-section (4) of section 122, as the case may be, after providing an opportunity of being heard to the taxpayer under sub-section (9) of section 122.
- 9) The fact that a person has been audited in a year shall not preclude the person from being audited again in the next and following years where there are reasonable grounds for such audits

# Audit

## “Appointment of a firm of CAs or ICMA’s”:

- 1) The Board may appoint a firm of Chartered Accountants or a firm of Cost and Management Accountants to conduct an audit of the income tax affairs of any person or classes of persons and the scope of such audit shall be as determined by the Board or the Commissioner on a case to case basis.
- 2) Any person employed by a firm appointed may be authorized by the Commissioner, in writing, to exercise the powers in sections 175 and 176 for the purposes of conducting an audit.

# Audit

## “Appoint of Special Audit Panels”:

- 1) The Board may appoint as many special audit panels as may be necessary, comprising two or more members from the following:
  - an officer or officers of Inland Revenue;
  - a firm of Chartered Accountants;
  - a firm of Cost and Management Accountants;
  - any other person including a foreign expert or specialist as directed by the Board, to conduct an audit, including a forensic audit, of the income tax affairs of any person or classes of persons and the scope of such audit shall be as determined by the Board or the Commissioner on case-to-case basis; or
  - a tax audit expert deployed under an audit assistance program of an international tax organization or a tax authority outside Pakistan.

# Audit

## “Appoint of Special Audit Panels”:

- 1) In case the member is not an officer of Inland Revenue, the person shall only be included as a member in the special audit panel if an agreement of confidentiality has been entered into between the Board and the person, international tax organization or a tax authority, as the case may be.
- 2) Special audit panel shall be headed by a Chairman who shall be an officer of Inland Revenue.
- 3) Powers to call for the record / documents for the purposes of conducting an audit shall only be exercised by an officer or officers of Inland Revenue, who are member or members of the special audit panel, and authorized by the Commissioner.

# Audit

## “Appoint of Special Audit Panels”:

- 4) If any one member of the special audit panel, other than the Chairman, is absent from conducting an audit, the proceedings of the audit may continue, and the audit conducted by the special audit panel shall not be invalid or be called in question merely on the ground of such absence.
- 5) Functions performed by an officer or officers of Inland Revenue as members of the special audit panel, for conducting audit, shall be treated to have been performed by special audit panel.
- 6) The Board may prescribe the mode and manner of constitution, procedure and working of the special audit panel

# Audit

## “Best Judgment”:

- 1) Where a person fails to produce any accounts, documents and records, required to be maintained before the Commissioner or a firm of Chartered Accountants or a firm of Cost and Management Accountants appointed by the Board or the Commissioner or a Special Audit Panel to conduct an audit:
  - the Commissioner may proceed to make best judgment assessment under section 121 of the Ordinance and
  - the assessment treated to have been made on the basis of return or revised return filed by the taxpayer shall be of no legal effect.



# Assessment

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

“**Assessment Year**” means the period of twelve months beginning on the first day of July next following the income year (**Normal Tax Year**) and includes any such period which is deemed, under any provision of the Ordinance, to be the assessment year in respect of any income or any income year (**Special Tax Year**).

# Assessment

## “Deemed Assessment / Self Assessment”

- 1) Where a taxpayer has furnished a complete return of income (other than a revised return for a tax year:
  - a) the Commissioner shall be taken to have made an assessment of taxable income for that tax year, and the tax due thereon, equal to those respective amounts specified in the return; and
  - b) the return shall be taken for all purposes of the Ordinance to be an assessment order issued to the taxpayer by the Commissioner on the day the return was furnished.
- 2) A return of income shall be taken to be complete if it is in accordance with the provisions of sub-section (2) of section 114.

# Assessment

## “Incomplete Return”

- 1) Where the return of income furnished is not complete, the Commissioner shall issue a notice to the taxpayer informing him of the deficiencies (other than incorrect amount of tax payable on taxable income, as specified in the return, or short payment of tax payable) and directing him to provide such information, particulars, statement or documents by such date specified in the notice.
- 2) Where a taxpayer fails to fully comply, by the due date, with the requirements of the notice issued by the Commissioner, the return furnished shall be treated as an invalid return as if it had not been furnished.
- 3) Where, the taxpayer has, by the due date, fully complied with the requirements of the notice, the return furnished shall be treated to be complete on the day it was furnished.
- 4) No notice shall be issued **after the expiry of one hundred and eighty days from the end of the financial year in which return was furnished**].

# Assessment

## “Amendment of assessments – Section 122”

- 1) The Commissioner may amend an assessment order treated as issued under section 120 or issued under section 121, by making such alterations or additions as the Commissioner considers necessary.
- 2) No order shall be amended by the Commissioner after the expiry of five years from the end of the financial year in which the Commissioner has issued or treated to have issued the assessment order to the taxpayer.
- 3) Where a taxpayer furnishes a revised return:
  - a) the Commissioner shall be treated as having made an amended assessment of the taxable income and tax payable thereon as set out in the revised return; and
  - b) the taxpayer’s revised return shall be taken for all purposes of the Ordinance to be an amended assessment order issued to the taxpayer by the Commissioner on the day on which the revised return was furnished.

# Assessment

## “Amendment of assessments – Section 122”

- 4) Where an assessment order (hereinafter referred to as the “original assessment”) has been amended, the Commissioner may further amend, as many times as may be necessary, the original assessment within the later of:
  - a) five years from the end of the financial year in which the Commissioner has issued or is treated as having issued the original assessment order to the taxpayer; or
  - b) one year from the end of the financial year in which the Commissioner has issued or is treated as having issued the amended assessment order to the taxpayer.

# Assessment

## “Amendment of assessments – Section 122”

- 5) An assessment order in respect of tax year, or an assessment year, shall only be amended and an amended assessment for that year shall only be further amended where, on the basis of definite information acquired from an audit or otherwise, the Commissioner is satisfied that:
- i. any income chargeable to tax has escaped assessment; or
  - ii. total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or
  - iii. any amount under a head of income has been mis-classified.

“**Definite information**” includes information on sales or purchases of any goods made by the taxpayer, receipts of the taxpayer from services rendered or any other receipts that may be chargeable to tax under the Ordinance, and on the acquisition, possession or disposal of any money, asset, valuable article or investment made or expenditure incurred by the taxpayer.



# Assessment

## “Amendment of assessments – Section 122”

- 6) The Commissioner may, after making, or causing to be made, such enquiries as he deems necessary, amend, or further amend, an assessment order, if he considers that **the assessment order is erroneous in so far it is prejudicial to the interest of revenue.**
- 7) In respect of any subject matter which was not in dispute in an appeal the Commissioner shall have and shall be deemed always to have had the powers to amend or further amend an assessment order.
- 8) As soon as possible after making an amended assessment, the Commissioner shall issue an amended assessment order to the taxpayer stating:
  - a) the amended taxable income of the taxpayer;
  - b) the amended amount of tax due;
  - c) the amount of tax paid, if any; and
  - d) the time, place, and manner of appealing the amended assessment.

# Assessment

## “Amendment of assessments – Section 122”

- 9) An amended assessment order shall be treated in all respects as an assessment order for the purposes of the Ordinance.
  
- 10) No assessment shall be amended, or further amended, under section 122 unless the taxpayer has been provided with an opportunity of being heard.

# Assessment

## “Best judgment assessment – Section 121”

1) Where a person fails to:

- a) furnish a statement as required by a notice under sub-section (5) of section 115; or
- b) furnish return of income in response to notice under sub-section (3) or sub-section (4) of section 114; or
- c) furnish a return as required under section 143 or section 144; or
- d) furnish the statement as required under section 116; or
- e) produce accounts, documents and records required to be maintained before the Commissioner, or a special audit panel or any person employed by a firm of chartered accountants or a firm of cost and management accountants under section 177

the Commissioner may, based on any available information or material and to the best of his judgement, make an assessment of the taxable income or income of the person and the tax due thereon.

# Assessment

## “Best judgment assessment – Section 121”

- 2) As soon as possible after making an assessment, the Commissioner shall issue the assessment order to the taxpayer stating
  - a) the taxable income;
  - b) the amount of tax due;
  - c) the amount of tax paid, if any; and
  - d) the time, place and manner of appealing the assessment order.
  
- 2) An assessment order shall only be issued within five years after the end of the tax year or the income year to which it relates.
  
- 3) Where notice for furnishing a return of income is issued in respect of one or more of the last ten completed tax years, an assessment order under this section shall only be issued within two years from the end of tax year in which such notice is issued.

# Assessment

## “Restriction of proceedings – Section 120B”

- 1) Where any person entitled to declare undisclosed assets, expenditure and undisclosed sales under the Assets Declaration Act, 2019 declares such assets, expenditures or sales to pay tax, no proceedings shall be undertaken under this Ordinance in respect of such declaration.

# Assessment

## **Provisional assessment in certain cases. Section 123**

- (1) Where a concealed asset of any person is impounded by any department or agency of the Federal Government or a Provincial Government, the Commissioner may, at any time before issuing any assessment order under section 121 or any amended assessment order under section 122, issue to the person a provisional assessment order or provisional amended assessment order, as the case may be, for the last completed tax year of the person taking into account the concealed asset.
- (1A) Where an offshore asset of any person, not declared earlier, is discovered by the Commissioner or any department or agency of the Federal Government or a Provincial Government, the Commissioner may at any time before issuing any assessment order under section 121 or amended assessment order under section 122, issue to the person a provisional assessment order or provisional amended assessment order, as the case may be, for the last completed tax year of the person taking into account the offshore asset discovered.
- (2) The Commissioner shall finalise a provisional assessment order or a provisional amended assessment order as soon as practicable.
- (3) In this section, “concealed asset” means any property or asset which, in the opinion of the Commissioner, was acquired from any income subject to tax under this Ordinance.



# Assessment

## Assessment giving effect to an order. Section 124

- (1) Except where sub-section (2) applies, where, in consequence of, or to give effect to, any finding or direction in any order made under Part III of this Chapter by the Commissioner (Appeals), Appellate Tribunal, High Court, or Supreme Court an assessment order or amended assessment order is to be issued to any person, the Commissioner shall issue the order within two years from the end of the financial year in which the order of the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court, as the case may be, was served on the Commissioner.
- (2) Where, by an order made under Part III of this Chapter by the 1 [ ] Appellate Tribunal, High Court, or Supreme Court, an assessment order is set aside wholly or partly, and the Commissioner or Commissioner (Appeals), as the case may be, is directed to pass a new assessment order, the Commissioner 5 [or Commissioner (Appeals), as the case may be, shall [pass] the new order within [one year from the end of the financial year in which] the Commissioner or Commissioner (Appeals), as the case may be, is served with the order  
Provided that limitation under this sub-section shall not apply, if an appeal or reference has been preferred, against the order, passed by Appellate Tribunal or a High Court.
- (3) 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 and 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 particulars which had already been furnished or filed..

# Assessment

## **Assessment giving effect to an order. Section 124**

(4) Where direct relief is provided in an order under section 129 or 132, the Commissioner shall issue appeal effect orders within two months of the date the Commissioner is served with the order.

(5) Where, by any order referred to in sub-section (1), any income is excluded — (a) from the computation of the taxable income of a taxpayer for any year and held to be included in the computation of the taxable income of the taxpayer for another year; or (b) from the computation of the taxable income of one taxpayer and held to be included in the computation of the taxable income of another taxpayer, the assessment or amended assessment relating to that other tax year or other taxpayer, as the case may be, shall be treated as an assessment or amended assessment to be made in consequence of, or to give effect to, a finding or direction contained in such order.

(6) Nothing in this Part shall prevent the issuing of an assessment order or an amended assessment order to give effect to an order made under Part III of this Chapter by the Commissioner (Appeals), Appellate Tribunal, High Court, or Supreme Court.

(7) The provisions of this section shall in like manner apply to any order issued by any High Court or the Supreme Court in exercise of original or appellate jurisdiction.

# Assessment

## **Assessment in relation to disputed property. Section 125**

Where the ownership of any property the income from which is chargeable to tax under this Ordinance is in dispute in any Civil Court in Pakistan, an assessment order or amended assessment order in respect of such income may be issued at any time within one year after the end of the financial year in which the decision of the Court is made. .

# Assessment

## **Automatic Selection of Audit- Section 214D.**

The Finance Act 2015 introduced automatic selection of audit in cases where:

- Complete return of total income not has been filed within the due date including the date extended by FBR or Commissioner;
- The tax payable based on the return of total income has not been paid;

Such provision was however not applicable in cases where:

25 percent higher tax than the previous tax year has been paid by such registered person and had declared taxable income in the return for immediately preceding tax year.

2 percent tax on turnover under section 113 has been paid by such registered person who files the return below taxable limit and in the preceding tax year has either not filed the return or had declared income below taxable limit; and

# Assessment

## Closure of cases automatically selected for audit

Section 214E was introduced vide Finance Supplementary (Amendment) Act, 2018 to provide for closure of audits initiated under Section 214D relating to automatic selection (omitted by Finance Act 2018).

The said section provided as follows:

Notwithstanding the omission of section 214D, audit of income tax affairs of a taxpayer shall be deemed to have been concluded in cases where:

- (a) The taxpayer has been selected for audit under section 214D;
- (b) Notice of amendment of assessment has not been issued;
- (c) Taxpayer has revised return of total income voluntarily, by 31<sup>st</sup> December 2018 along with the payment of;
  - 25% higher tax than the tax paid with return on basis of taxable income or
  - 2% of the turnover where no tax is payable, or
  - Where no turnover is declared, penalty of 0.1% of tax payable for each day subject to a maximum of 50% of tax payable or if no tax is payable then, minimum penalty of Rs. 20,000.

# Assessment

## **Closure of cases automatically selected for audit**

Provided that the above conditions shall not apply to taxpayers having only salaried income or income subject to Final tax regime.

The Second Amendment Ordinance has now added two new clauses in section 214E whereby the Board may prescribe procedure for conclusion of audit of income tax affairs of a person automatically selected for audit under omitted section 214D. Such prescribed procedure may include acceptance of declared income of a taxpayer for a tax year subject to conditions specified therein.



# Case Study

## Fact of the Case

- Taxpayer filed its income tax return on 30 September 2017.
- The Commissioner Inland Revenue (CIR) issued show-cause notice under section 122(9) read with section 122(5A) of the Ordinance.
- The CIR in show-cause notice required the company to produce information and made enquiries into the factual position and calling of information for the re-assessment of the Company.
- The CIR issued multiple notices.
- The CIR deviated from original contentions.
- The CIR made addition under section 111 of the Ordinance without issuing notice under section 111.

# Case Study

## Advice the option available

- File application for rectification of the Order passed under section 122(5).
- File appeal before the Commissioner Inland Revenue Appeals on following grounds:
  - ✓ The provisions of section 122(5A) doesn't empower to make enquires and to call for information. **113 Tax 53 (Trib.), 109 Tax 85 (Trib.)**
  - ✓ Multiple notice cannot be issued. **2013 PTD 1557 (S.C. Pak.), 2009 PTD 121 (Trib.)**
  - ✓ The provisions of section 122(5A) doesn't allow to change contention again and again. **111 TAX 51 (Trib.)**.
  - ✓ The addition under section 111 cannot be made without issuing specific and separate notice under section 111. **2017 PTD 1839, 2015 PTD 1242**



Thank  
you