



Tax Litigation & Other Alternatives

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Tax litigation

There are certain means of litigation provided in the tax laws itself

Apart from the means provided in the tax laws, some other modes are also available

- ▶ Appeals under the Income Tax Ordinance, 2001 and the Sales Tax Act, 1990
- ▶ Alternative Dispute Resolution
- ▶ Federal Tax Ombudsman
- ▶ Constitution/ Writ Petition before the High Court

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 by a higher court of the decision of any sub-ordinate court

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

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 of appeal 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; 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 a taxpayer and a tax collector

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

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)/ the Appellate Tribunal are empowered to accept 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

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)

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 a 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 – Supreme Court on facts

If a taxpayer is not satisfied with the order of the Commissioner (Appeals), he can file a further appeal before 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)

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 even in cases where a stay granted by the Appellate Tribunal is available

Powers of Appellate Authority Sections 128,129 & 131

Appellate Authorities are empowered to entertain new ground of appeal not taken earlier by the appellant

For this, an application is required 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, it may accept the additional ground of appeal

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

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 the 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

Alternative Dispute Resolution

Alternative Dispute Resolution

Section 134A/ S.47A

As the name suggests, it is an alternative mechanism to resolve tax disputes

Alternative Dispute Resolution

Section 134A/ S.47A

An aggrieved person may take up the following disputes for ADR –

- (a) tax liability against the aggrieved person, or admissibility of refunds, as the case may be;
- (b) the extent of waiver of default surcharge and penalty; or
- (c) any other specific relief required to resolve the dispute

The dispute brought for ADR should be pending before an Appellate Authority or a Court of Law

Alternative Dispute Resolution

Section 134A/ S.47A

However, such disputes where criminal proceedings have been initiated or where interpretation of question of law is involved (having effect on other cases) are not permitted for ADR

An application is made to the FBR for constitution of a Committee (“ADRC”) detailing the dispute sought to be resolved

After examination of the application, the FBR would appoint the ADRC, within 60 days of receipt of such application

Alternative Dispute Resolution

Section 134A/ S.47A

The ADRC would comprise of –

- (i) an officer of Inland Revenue not below the rank of a Commissioner;
- (ii) person nominated by the taxpayer from a panel notified by the FBR comprising —
 - (a) Chartered Accountants, Cost and Management Accountants and Advocates having minimum 10 years' experience in the field of taxation (such a person cannot be appointed who is or has been the auditor or an authorized representative of the taxpayer); and

Alternative Dispute Resolution

Section 134A/ S.47A

- (b) reputable businessmen as nominated by Chambers of Commerce and industry:

- (iii) a retired Judge not below the rank of District and Sessions Judge, to be nominated through consensus by the appointed members

Alternative Dispute Resolution

Section 134A/ S.47A

The aggrieved person, or the Commissioner, or both, as the case may be, are required to withdraw their appeals pending before any Court of Law or an Appellate Authority, after constitution of ADRC

Alternative Dispute Resolution

Section 134A/ S.47A

The recovery of tax payable by a taxpayer in connection with any dispute for which ADRC has been appointed shall be deemed to have been stayed on withdrawal of appeal up to the date of decision by the ADRC

The decision of the ADRC shall be binding on the Commissioner and the aggrieved person/ taxpayer

Federal Tax Ombudsman

FEDERAL TAX OMBUDSMAN

The office of the Federal Tax Ombudsman was established in the year 2000 through the “Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000”

The purpose of establishment of the office of Federal Tax Ombudsman (“FTO”) has been specified to be –

“to diagnose, investigate, redress and rectify any injustice done to a person through maladministration by functionaries administering tax laws;”

The dispute that can be brought before the FTO may relate to the following –

- i. the Provisional Collection of Tax Act 1931;
- ii. the Commercial Documents Evidence Act, 1939;
- iii. the Federal Excise Act, 2005;
- iv. the Customs Act, 1969;
- v. the Workers' Welfare Fund Ordinance, 1971;
- vi. the Prevention of Smuggling Act, 1977;
- vii. the Income Tax Ordinance, 2001;

- viii. the Import of Goods (Anti-dumping and Countervailing Duties) Ordinance, 1983;
- ix. section 7 of the Finance Act, 1989;
- x. the Sales Tax Act, 1990;
- xi. section 12 of the Finance Act, 1991;
- xii. such other laws having nexus with taxation as the Federal Government may, specify to be the Relevant Legislation for the purposes of the FTO Ordinance; and
- xiii. the rules, regulations and notifications made or issued there under

Jurisdiction, functions and powers of the FTO

- ▶ The FTO may act when –
 - ▶ a complaint is filed by any aggrieved person; or
 - ▶ on a reference made by the President, the Senate or the National Assembly: or
 - ▶ on a motion of the Supreme Court or a High Court made during the course of any proceedings before it; or
 - ▶ on his own motion, investigate any allegation of maladministration on the part of the Revenue Division or any tax employee

Jurisdiction, functions and powers of the FTO

- ▶ However, the FTO shall not have jurisdiction in respect of the following matters, which –
 - ▶ are subjudice before a court of competent jurisdiction or Tribunal or FBR or authority; or
 - ▶ relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation

What is maladministration ?

- ▶ Maladministration includes -
 - ▶ a decision, process recommendation, act of omission or commission which -
 - is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons;
 - is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory;
 - is based on irrelevant grounds; or involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as bribery, jobbery, favouritism, nepotism, and administrative excesses;

What is maladministration ?

- ▶ neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities; -
- ▶ repeated notices, unnecessary attendance or prolonged hearings while deciding cases involving -
 - assessment of income or wealth;
 - determination of liability of tax or duty;
 - classification or valuation of goods;
 - settlement of claims of refund, rebate or duty drawback; or
 - determination of fiscal and tax concessions or exemptions;

Bar of jurisdiction

- ▶ No court or other authority shall have jurisdiction to –
 - ▶ question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under the FTO Ordinance; or
 - ▶ grant an injunction or stay in relation to any proceedings before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the FTO

Representation to President

- ▶ The Revenue Division or any person aggrieved by a recommendation of the FTO may, within thirty days of the recommendation, make a representation to the President who may pass such order thereon as he may deem fit

Informal resolution of disputes

- ▶ the FTO and authorized Staff Members shall have the authority to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice

Constitution/ Writ Petition before the High Court

Constitution/ Writ Petition before the High Court

Article 199

A Constitution Petition (“CP”) is filed in terms of Article 199 of the Constitution of Pakistan, 1973 in cases where no other adequate remedy is provided by law

Generally amendments in law or a law itself which appear contrary to the rights provided in the Constitution of Pakistan are challenged in a CP

In addition, show cause notices which are per se illegal or without jurisdiction are also challenged in a CP

However, a CP is not an alternate of appeal process provided in a taxing statute

Thank You