

Ref : KTBA/10.2021/266

Date : October 06, 2021

Dr. Muhammad Ashfaq Ahmed,
Hon'ble Chairman,
Federal Board of Revenue,
Islamabad.

COMPUTATIONAL ERRORS AND TECHNICAL ISSUES IN FILING OF INCOME TAX RETURN FOR THE TAX YEAR 2021

Dear Dr. Muhammad Ashfaq Ahmed Sahab,

This is in furtherance to our letter No. KTBA/09.2021/260 dated September 21, 2021 with respect to technical problems on FBR's IRIS portal which insofar, have been addressed to a few while rest still awaits your kind consideration and urgent attention.

To start with, we take you back to the matter of erroneous tax computation on IRIS portal with respect to **incomes expressed as "minimum tax" U/s. Sections 153, 234A** and others of Income Tax Ordinance, 2001, where owing to some pre-fixed attributes/formulae taxpayers are forced to pay additional tax or file mix-up return. The issue despite being pitted to judicial wrangling before Lahore High Court in writ jurisdiction No. 57220 of 2021 dated September 24, 2021 (copy enclosed for ready reference) has not been resolved as yet.

Furthermore, the return of income at IRIS still suffers from the following key technical issues and anomalies, which we had highlighted detail vide our letter dated September 21, 2021 but it still awaits resolution on your part:

- **Loss on disposal of securities U/s. 37A**
- **Incorrect working of tax on Foreign Incomes**
- **Discrepancies in tax computation of commercial importers**
- **Tax on fee for Technical Services / Royalty of a Non-Resident Person**

Finally, we tend to add that the **Simplified Return of Income for SMEs** was unceremoniously uploaded on IRIS portal without prescribing a draft return as required U/s. 100E(2) read with Section 237 of the Income Tax Ordinance, 2001.

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To finish with, we sincerely appreciate the FBR's unreserved gesture to extend the filing date upto October 15, 2021, owing to the serious technical problems in IRIS portal and hope that the FBR will resolve all the issues in due course. We, however, equally believe that 90 days time prescribed U/s. 118 of the Income Tax Ordinance, 2001, will only begin once the due diligence prescribed in law and rules is followed in pith and substance and a complete and flawless Return of Income is notified in terms of Section 237 of the Income Tax Ordinance, 2001.

We hope law and rule will always be respected in true sprit under your captivating leadership.

Thanking you,
Yours sincerely,


(**Muhammad Zeeshan Merchant**)

President

Mobile: 0321-8230513

E-mail: zeeshan@mmmerchant.com

C.C. to:

- i. **Mr. Qaiser Iqbal**, Member-IR (Operations), FBR, Islamabad.
- ii. **Mr. Afaq Ahmed Qureshi**, Member-IR (Policy), FBR, Islamabad.
- iii. **Dr. Ashfaq Ahmad Tunio**, Member (Information Technology), FBR, Islamabad.
- iv. **Syed Ghulam Abbas Kazmi**, Member (Legal), FBR, Islamabad.
- v. **Mr. Aftab Hussain Nagra**, President, Pakistan Tax Bar Association.
- vi. **Press and Media.**

Form No: HCJD/C-121
ORDER SHEET

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IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Examiner
Copy Supply Section
Lahore High Court Lahore

Case No. Writ Petition No. 57220 of 2021.

Shahid Latif Khliji

Versus Federation of Pakistan, etc.

S. No of order /proceedings	Date of order of proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary
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24.09.2021

M/s Chaudhary Anwaar-ul-Haq Arif, Rana Munir Hussain, Tahir Mehmood Butt, Muhammad Ijaz Ali Bhatti, Zahid Attique Chaudhry and Ch. Qamar-uz-Zaman, Advocates for the petitioner.

Malik Navid Sohail, Additional Attorney General for Pakistan.

Mr. Monim Sultan, Assistant Attorney General for Pakistan.

Mr. Abdul Muqtadir Khan, Advocate for the respondents/FBR.

Dr. Ishtiaq Ahmad Khan, Commissioner Inland Revenue (Legal), LTU, Lahore.

Mr. Tariq Iqbal, Secretary, Police Wing, Islamabad.

Mr. Noman Malik, Chief IT, FBR, Islamabad.

Petitioner is aggrieved of inaction on the part of respondent-FBR for not addressing the issue raised through representation (Annex-C) filed by the petitioner and another representation (Annex-B) filed by Pakistan Tax Bar Association.

Learned counsel for the petitioner submits that hardship being faced by the lawyer community is that their income relatable to Section 153(1)(b) of the Income Tax Ordinance, 2001 ("Ordinance of 2001") is being wrongly calculated by the system, while accepting the return, filed under Section 114 of the Ordinance of 2001. It is explained that the tax withheld under the income, *ibid*, is treated as minimum income. The concept of minimum income is that withheld tax shall not be refunded, however, it is adjustable, if paid in access towards the higher income. It is submitted that formula imposed by the system is against the spirit of Section 120 of the Ordinance of 2001, which allows the

taxpayer to make his own declaration, which shall be treated as an Assessment Order by the operation of law.

2. The last submission appears to be serious legal question. The disputes relating to the calculation of tax and its apportionment relate to the system, which cannot be looked into by this Court in constitutional jurisdiction, however, this Court can certainly look into the matter to the extent of enforcing the spirit of law.

In this age, use of computer and automation cannot be made redundant. However, the regulators introducing such system have to be careful and should ensure that spirit of law is not violated including statutory rights of the taxpayer conferred by the relevant law.

3. Representatives of the respondents/FBR are present in Court in pursuance of order dated 22.09.2021. At the outset, it is stated that petitioner shall be provided opportunity of being heard on 27.09.2021, on the pending representation, which shall be decided expeditiously, enabling the petitioner to file Return within the stipulated time. In case of hardship, petitioner and other similarly placed persons shall be accommodated accordingly.

4. The spirit of law cannot be sacrificed on the altar of automation, as right of self-assessment and filing of Return is bestowed by the statute itself, therefore, a simple rejection, by system, of Return appears to be against the spirit of law.

Confronted with this, Mr. Nouman Malik, Chief IT FBR, present in Court, has undertaken to look into this issue, for all the taxpayers, and resolve the same by amendment in IRS system or otherwise, after following the due procedure.

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5. On this undertaking, petition being fructified is disposed of for the time being.

(Shahid Jamil Khan)
Judge

Noor *

True Copy
In Case No.
27/9/21
Examiner: JIS (Writ Branch)
Lahore High Court, Lahore

Copy Petition No: 30311

Case No. _____

Submission Date: 24/9/21

No. of Pet. _____

Fee No. _____

Original Fee _____

Total _____ 12

22/9/21

Examiner Copy Supply Section

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Constitution of Pakistan

27/9/21