

AUDIT – ASSESSMENT - APPEALS UNDER THE INCOME TAX ORDINANCE, 2001



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18TH DECEMBER, 2019

CONCEPT

- ❖ Relatively new concept as compared to total audit or detailed scrutiny of the past

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:

- (1) to make an official, systematic examination of accounts
- (2) 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.

(3) is a systematic and meticulous scrutiny of accounts with reference to the receipts and Payments 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 under Income Tax Ordinance, 2001

- Section 177 – Selection for audit by the Commissioner Inland Revenue (CIR)
- Section 214C - Selection by the FBR through random or parametric computer balloting

Conduct of Income Tax Audit

- Officer has to allow opportunity u/s 177(6) before embark upon amendment u/s 122
- CIR may assign jurisdiction to conduct Audit to

Sec 210:-

- Officer Inland Revenue
- Chartered Accountant appointed by him or by the FBR
- Audit panel appointed by the FBR

Department's Viewpoint on Selection u/s 177

- ⦿ Both sections 177 and 214C are independent and both i.e. CIR as well as FBR are empowered to conduct audit.
- ⦿ While CIR exercising powers has to record reasons before embark upon audit
- ⦿ Whereas CIR is not obliged to record reasons when FBR directs CIR to conduct audit u/s 214C
- ⦿ Explanation in sections 214C and 177 further clarified that both authorities can exercise powers for audit

Selection for Audit u/s 177 of the IT Ordinance , 2001

➤ Taxpayer's point of view

- Sindh High Court dismissed CPs filed by the taxpayers - 2016 PTD 1214 [Norinpaco & Others Vs Federation] Decided on 25-08-2015

- Latest position of litigation on the issue of selection for audit:-
- Lahore High Court judgment in ICA 855 of 2014 Dt.17-11-2017 [FBR etc. Vs M/s Chenone Stores Ltd.]
- Single Bench decision in Chenone Stores' Case
The CIR has no power to select for audit, in presence of FBR's power u/s 214C.
- Single Bench decision in Kohinoor Sugar Mills' Case
The CIR has independent powers to select a case for audit under Section 177, in the presence of FBR's powers u/s 214C.

- ICA 855 of 2014 Dt. 17-11-2017 decided in favour of Department upholding SB judgment in Kohinoor Sugar Mills' Case
- **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

Frequent Audit Selection

- Sub section (7) of section 177 permits audit of next year despite of last year's audit
- CIR applies this provision every year and creates hardship
- Clause (105), Part IV of Second Schedule inserted through F.A.2018 imposing bar for selection of audit u/s 177 and 214C for next three years. This has been omitted via the F.A. 2019

Special Audit Panel

- Through F.A 2018 a major change is introduced through sub section (11) to (17) in section 177
- Two or more members may conduct special audit through a panel of experts and FBR officers. Hence concept of 'JIT' in revenue audit is evolved
- Provision of forensic audit through panel is provided
- Even foreign expert can be called for special audit
- FBR is empowered to frame rules for working of special panel
- Panel is fully equipped with legal powers necessary for conduct of audit

Repealed Concept of Automatic Audit Selection

- Section 214D provides for automatic selection of case for audit when taxpayer files return 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 has been deleted
- And new section 182A restricts entitlement of ATL to filers within due date ONLY

Significance of Sections 177(6), (7), (10), (11), (12), (13), (14), (15) & (16)

- CIR, RTO, Hyderabad Vs Dr. Muhammad Azeem Almani [(2015 PTD (Trib.) 1242)]
- Honda Fort Vs CIT 2009 PTD 20 (HC Lah.)
- CIR (Legal) Vs CIR (A) 2013 PTD 837 & CIT Vs M/s Duaba Plastic Industries 2015 PTD 681
- Judgment of Supreme Court of Pakistan in Civil Appeal No 526/2013 confirming judgment of Lahore High Court reported as 2013 PTD 837

How many times a Taxpayer can be Selected for Audit in a Year

- Can second audit be called for the same tax year?

➤ Income Tax – No

2011 PTD 1558 (HC Kar.) [M/s Shahnawaz Ltd Vs Federation of Pakistan]

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 costs
 - However. FBR by recording plausible reasons may extend timeline on a case to case basis

ASSESSMENT. v. AUDIT.

Assessment is defined as **recording of TAX LIABILITY or Refund in the books.** If any discrepancy or transaction contrary to the INCOME TAX LAW or generally accepted ACCOUNTING procedure, during an Audit or otherwise is detected, an amended assessment is made on the basis of such detection.

Audit is different from assessment

Forensic Audit

AUDIT DOES NOT AND SHOULD NOT NECESSARILY LEAD TO AN ASSESSMENT OR AMENDED ASSESSMENT IN EVERY CASE.

Assessment Defined

- Sub-section (5) of section 2 of ITO, 2001
- "assessment" includes provisional assessment, re-assessment and amended assessment and the cognate expressions shall be construed accordingly

What is Cognate Expression

- Computation of income
- Determination of tax payable
- Procedure laid down in the Ordinance imposing liability on the taxpayer or reducing refund
(Special provisions)
- Modification through rectification
- Appeal Effects
- Best judgment assessment

Normal Sequence of Assessments

- Deemed assessment [Sec 120]
 - What is a complete return [Sec 114(2)]
 - How an incomplete return becomes complete [Sec 120(3) & (5)]
 - How an incomplete/ invalid return becomes a valid return [Sec 120(3) & 120(6)]

Assessment under IT law

- Deemed assessment may undergo the following actions
 - No further action: as such the Revenue accepted without further modification
 - May be subjected to audit u/s 177 or 214C
 - May be subjected to upward revision u/s 122(5A) if it was erroneous in so far as prejudicial to the interest of revenue
 - Officer may apply section 122(1) r/w 122(5) on the basis of definite information
 - Taxpayer may desire to revise return u/s 114(6) r/w (6A) and return is treated as an assessment order

TYPE OF ASSESSMENT

- Deemed Assessment Sections 120(1), 169(3)
- Best Judgment Assessment Section 121
- Amended Assessment Section 122
- Amended assessment on account of 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)
- Assessment order is considered erroneous and prejudicial in the interest of revenue Section 122(5A)
- Provisional Assessment- concealed assets Section 123
- Consequential Assessment after appeal Section 124
- Modification of Assessment Section 124A
- Assessment in case of disputed property Section 125

BEST JUDGEMENT ASSESSMENT

In case of –

- non-furnishing of return in response to notice u/s 114(3) or 114(4);
- non-furnishing of statement in compliance to notice u/s 115(5) or 143, 144 or 116;
- during audit for failure to produce accounts, documents and records required to be maintained u/s 174

the Commissioner may make assessment to the best of his judgment u/s 121 based on information or material available on record

Best Judgment Assessment Continued

For making best judgment:-

- a. History should be followed 2009 PTD 638 Trib.
- b. There must be a speaking order 99 TAX 329 Trib.
- c. Should not be passed for single default 29 TAX 192,
1987 PTD 39
- d. Should be proper, fair and not dishonest 1959 PTD 180 H.C.

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 any Dispute 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

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

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

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 schedule 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

Reference to High Court

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

**A lawyer is a person who writes a
thousand words document
and calls it a
'BRIEF'**

THANK YOU