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Audit and Assessment

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Topics

- **Audit of Income Tax Affairs**
- **Assessment and Amendment of Assessment**
- **Indirect Taxes Tax Assessment Proceedings**
- **Tax Litigation, Other Alternatives & Appeal hearing**

02

Audit of Income Tax Affairs

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.
- 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 Board – Section 214C”:

5) Immunity from tax audit

The Act has inserted clause (105A) to provide that a taxpayer shall not be selected for tax audit whose income tax affairs have been audited in any of the preceding three tax years. However, Commissioner may select a person for tax audit with the approval of Federal Board of Revenue.

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) 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”:

- 4) 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.
- 5) 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.
- 6) 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.**
- 7) 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”:

- 8) 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.
- 9) 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.
- 10) 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 ICMAAs”:

- 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 based on any available information or material and to the best of his judgement make an assessment of taxable income.
 - 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.

03

Assessment and Amendment of Assessment

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 the respective amounts adjusted 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 adjustments were made, and 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 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.

Provided that order under section shall be made within one year of issuance of show cause notice or within such extended period as the Commissioner may for reasons to be recorded in writing, so however such extended period shall in no case exceed ninety days. This proviso shall be applicable to a show cause notice issued on or after the first day of July, 2021.

Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or agreed assessment proceedings under section 122D or the time taken through adjournment by the taxpayer not exceeding sixty days shall be excluded from the computation of the period specified in the first proviso.

Assessment

“Best judgment assessment – Section 121”

- 1) Where a person fails to:
 - a) furnish return of income in response to notice under sub- section (3) or sub- section (4) of section 114; or
 - b) furnish return of income in response to notice under sub-section (3) of section 117;
 - 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 on the basis of sectorial benchmark ratios prescribed by the Borad 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 six 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

“Revision by the Commissioner – Section 122A”

- (1) The Commissioner may, suomoto, call for the record of any proceeding under this Ordinance or under the repealed Ordinance in which an order has been passed by any Officer of Inland Revenue
- (2) Subject to sub-section (3), where, after making such inquiry as is necessary, Commissioner considers that the order requires revision, the Commissioner may suomoto make such revision to the order as the Commissioner deems fit.
- (3) An order under sub-section (2) shall not be prejudicial to the person to whom the order relates.
- (4) The Commissioner shall not revise any order under sub-section (2) if—
 - (a) an appeal against the order lies to the Commissioner (Appeals) or to the Appellate Tribunal, the time within which such appeal may be made has not expired; or
 - (b) the order is pending in appeal before the Commissioner (Appeals) or has been made the subject of an appeal to the Appellate Tribunal.

Assessment

“Revision by the Commissioner – Section 122A”

- (5) If any order is remanded back to any lower authority by the Commissioner for modification, alteration, implementation of directions or de novo proceedings, the order giving effect to the directions of the Commissioner shall be issued within one hundred and twenty days.

Assessment

“Agreed assessment in certain cases. – Section 122D”

- (1) Where a taxpayer, in response to a notice under sub-section (9) of section 122, intends to settle his case, he may file offer of settlement in the prescribed form before the assessment oversight committee, hereinafter referred to as the Committee, in addition to filing reply to the Commissioner.
- (2) The Committee after examining the aforesaid offer may call for the record of the case and after affording opportunity of being heard to the taxpayer, may decide to accept or modify the offer of the taxpayer through consensus and communicate its decision to the taxpayer.
- (3) Where the taxpayer is stratified with the decision of the Committee,-
 - (a) the taxpayer shall deposit the amount of tax payable including any amount of penalty and default surcharge as per decision of the Committee;
 - (b) the Commissioner shall amend assessment in accordance with the decision of the Committee after tax payable including any amount of penalty and default surcharge as per decision of the Committee has been paid;
 - (c) the taxpayer shall waive the right to prefer appeal against such amended assessment; and

Assessment

“Agreed assessment in certain cases. – Section 122D”

- (d) no further proceedings shall be undertaken under this Ordinance in respect of issues decided by the Committee unless the tax as per clause (c) has not been deposited by the taxpayer.
- (4) Where the Committee has not been able to arrive at a consensus or where the taxpayer is not satisfied with the decision of the Committee, the case shall be referred back to the Commissioner for decision on the basis of reply of the taxpayer in response to notice under sub-section (9) of section 122 notwithstanding proceedings or decision, if any, of the Committee.
- (5) The Committee shall comprise the following income tax authorities having jurisdiction over the taxpayer, namely:-
 - (a) the Chief Commissioner Inland Revenue;
 - (b) the Commissioner Inland Revenue; and
 - (c) the Additional Commissioner Inland Revenue.

Assessment

“Agreed assessment in certain cases. – Section 122D”

- (6) This section shall not apply in cases involving concealment of income or where interpretation of question of law is involved having effect on other cases.
- (7) The Board may make rules regulating the procedure of the Committee and for any matter connected with, or incidental to the proceedings of the Committee.]

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 finalize 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 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 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.

Assessment

Assessment giving effect to an order – Section 124

- (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.
- (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) If the tax determined in the appealed order is confirmed by the Commissioner (Appeals), Appellate Tribunal, High Court, or Supreme Court, no appeal effect order is needed, and the Commissioner shall proceed with recovery.
- (6) Where the Appellate Tribunal, High Court, or Supreme Court partly sets aside and partly confirms or modifies the order, the Commissioner shall issue an appeal effect order determining tax payable on the confirmed or modified issues, excluding those set aside or remanded, and recover such tax as per the Ordinance.

Assessment

Assessment giving effect to an order – Section 124

- 7) 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.
- 8) 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.
- 9) 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. (OMITTED)

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 provides 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 31st 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 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.

04

Indirect Taxes Tax Assessment Proceedings

Topics under discussion

1. Self Assessment Scheme – An Introduction
2. Tax Assessment Proceedings – An Overview
3. Enabling provision empowering tax officers to Access records, Scrutiny, Inquiry Investigation
4. Tax Assessment Provisions
5. Handling Tax Assessment Proceedings- Key Considerations
6. Penal Provisions- General Principles

Self Assessment Scheme – An Introduction

- Taxpayer Service oriented tax administration
- Simple tax laws & return filing procedures
- Post filing controls, enforcement and collection measures aimed at protecting the revenue
- Effective Risk based audit
- Interest & penalty regime for deterrence

Self Assessment Scheme – An Introduction

Circumstances – Need for Enforcement Powers

- Taxpayers fail to file return at all
- Taxpayer files incorrect returns inadvertently
- Taxpayer files incorrect returns fraudulently
- Taxpayer claims a refund which was not due to him
- Taxpayers fail to deposit the admitted tax liability
- Risk based audit of selected taxpayers to provide deterrence

Tax Assessment Proceedings- Overview

- Interplay of three;
 - Tax officer
 - Taxpayer
 - Tax laws
- Things should be done in manner prescribed under the law or should not be done at all

Tax Assessment Proceedings- Overview

- Deemed to be quasi judicial proceedings
- All principles of natural justice are applicable
- Audi alterem Partem, [reasonable hearing opportunity!]
- Article 10A of Constitution of Pakistan, Clause 24A of General Clauses Act
- Discretionary powers are to be exercised in structured manner

Audit, Inquiry & Investigation - Meaning

Audit

“A formal examination of an individual's or organization's accounting records, financial situation, or compliance with some other set of standards.” [Black Law Dictionary – 9th Edition]

“Audit is a tool strategically monitors the regime of sales tax and in primarily geared to decipher tax evasion from amongst the pool of taxpayers. It is a departmental surveillance tool for sniffing out tax that has gone unpaid.” [LHC judgment reported as PTCL 2014 CL 726]

Inquiry

“Inquiry is the aiming at or discovery of truth by question, either formal, verbal interrogation, or a recourse to the proper means and sources of knowledge when the object has been shaped into a question or problem for solution.” [Advanced Law Lexicon Book 2, 3rd Edition 2005]

Investigation

“Investigation means search for material and fact in order to find out whether or not an offence has been committed.”

Section 24

Retention of record and documents for Six years

A person, who is required to maintain any record or documents under this Act, shall retain the record and documents for a period of Six years after the end of the tax period to which such record or documents relate or till such further period the final decision in any proceedings including proceedings for assessment, appeal, revision, reference, petition and any proceedings before an alternative Dispute Resolution Committee is finalized.

Section 24

Audit of Sales Tax Affairs

(1) The Commissioner on the basis of reasons to be recorded in writing, may direct the officer of Inland Revenue not below the rank of Assistant Commissioner to conduct audit of sales tax affairs of any registered person and issue a notice to such registered person intimating him regarding audit of sales tax affairs.

(3) The reasons referred to in sub-section (1) shall be based on scrutiny of the available records including sales tax and federal excise returns, income tax returns and withholding statements, financial statements or third party information:

(7) The officer of Inland Revenue not below the rank of Assistant Commissioner shall conduct audit of the sales tax affairs to verify the correctness or otherwise of the declared tax liability, output tax, input tax claimed, tax paid, refund claimed, stocks consumed or available for ascertaining compliance or otherwise with the provisions of this Act and the rules made thereunder on the basis of the record and evidence obtained.

(8) The officer of Inland Revenue may conduct audit proceedings electronically through video links, or any other facility as may be prescribed by the Board.

Section 24

Audit of Sales Tax Affairs

(9) After completion of the audit, the officer of Inland Revenue may, if required pass an order under section 11E, after providing an opportunity of being heard to the registered person under sub-section (1) of section 11E.

(10) Notwithstanding anything contained in sub-sections (7) and (9) where a registered person fails to produce before the officer of Inland Revenue, any accounts, documents or records required to be maintained under this Act or the rules made thereunder or any other relevant document electronically kept record, electronic machine or any other evidence that may be required by the officer of Inland Revenue for the purpose of audit. The officer of Inland Revenue may proceed to make best judgment assessment under section 11D of this Act.

(11) Notwithstanding the penalties prescribed in section 33, if a registered person wishes to deposit the amount of tax short paid or amount of tax evaded along with default surcharge voluntarily, whenever it comes to his notice, before receipt of notice of audit, no penalty shall be recovered from him:

Section 24

Audit of Sales Tax Affairs

Provided that if a registered person wishes to deposit the amount of tax short paid or amount of tax evaded along with default surcharge during the audit, or at any time before issuance of show cause notice under section 11E, he may deposit the evaded amount of tax, default surcharge under section 34, and **twenty five percent** of the penalty payable under section 33:

Provided further that if a registered person wishes to deposit the amount of tax short paid or amount of tax evaded along with default surcharge after issuance of show cause notice under section 11E, he shall deposit the evaded amount of tax, default surcharge under section 34, **and full amount** of the penalty payable under section 33 and thereafter, the show cause notice, shall stand abated.

Explanation.- For the removal of doubt, it is declared that the powers of the Commissioner to direct conduct of audit and to issue a notice under this sub-section are independent of the powers of the Board under section 72B and nothing contained in section 72B restricts the powers of the Commissioner to direct conduct of audit and to issue notice under this sub-section.

Section 72B

Selection of audit by the Board

(1) The Board may select persons or classes of persons for audit of tax affairs through computer ballot which may be random or parametric as the Board may deem fit.

(1A) Notwithstanding anything contained in this Act or any other law, for the time being in force, the Board shall keep the selection parameters confidential.

(2) Audit of tax affairs of persons selected under sub-section (1) shall be conducted as per procedure given in section 25 and all the provisions of this Act shall apply accordingly.

(3) For the removal of doubt, it is hereby declared that the Board shall be deemed always to have had, the power to select any persons or classes of persons for audit of tax affairs under this section.

Section 2(1)

Abettor

means a person who intentionally abets or connives in tax fraud as defined in clause (37) of section 2 or in the commission of any offence warranting prosecution under this Act, and includes a person who

- prepares, or causes to be prepared with authorization of the registered person, invoices for false claim of input tax adjustment; or
- allows use of bank account held or operated by him for abetting tax fraud or other offence warranting prosecution under this Act or unauthorizedly or illegally maintains or operates business bank account in other registered person's name.

Section 2(37)

Fraud

means knowingly, intentionally, or dishonestly doing any act or abetting any action to cause loss of tax under this Act, including,-

- using or preparing false, forged, and fictitious documents, including returns, statements, annexures, and invoices;
- false claim of input tax credit based on fictitious transactions;
- issuance of any tax invoice without supply of goods;
- tampering with or destroying of any material evidence or documents required to be maintained under this Act or the rules made thereunder;
- generating fake input through manipulation of return filing system of the Board and making fake entries in the sales tax returns or in the annexures;
- making fictitious compliance of section 73, including routing of payments back to the registered person, or for the benefit of the registered person, through a bank account held by a supplier or a purported supplier;

Section 2(37)

Fraud

- suppression of supplies that are chargeable to tax under this Act;
- making taxable supplies of goods without issuing any tax invoice;
- suppression and nonpayment of withholding tax in the prescribed manner beyond a period of three months from due date of payment of tax;
- acquisition, possession, transportation, disposal or in any way removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner dealing with, any goods in respect of which there are reasons to believe that these are liable to confiscation under this Act or the rules made thereunder;
- making of taxable supplies without getting registration under this Act.

Section 30(AB)

Tax Fraud Investigation Wing Inland Revenue

- 1) There shall be established a wing to be known as Tax Fraud Investigation Wing-Inland Revenue.
- 2) The functions of the tax fraud Investigation Wing Inland Revenue shall be to detect, analyze, investigate, combat and prevent tax fraud.
- 3) The tax fraud Investigation Wing Inland Revenue shall comprise Fraud Intelligence and Analysis Unit, Fraud Investigation Unit, Legal Unit, Accountants Unit, Digital Forensic and Scene of Crime Unit, Administrative Unit or any other Unit as may be notified by the Board through notification in the official Gazette.

Section 37A

Revised framework for inquiry, investigation and arrest

- Section 37A has been entirely substituted which provides that an officer not below the rank of Assistant Commissioner or any other officer authorized by the Board may initiate an inquiry based on material evidence of tax fraud or an offence warranting prosecution, upon Commissioner's approval.
- The inquiring officer shall have enhanced powers as above and may exercise powers under relevant sections including sections 37, 38, 38A, 38B, and 40.
- During inquiry proceedings, the officer may afford the accused an opportunity of being heard, confronting them with the particulars of the alleged tax fraud or prosecutable offence.
- The officer shall submit the inquiry findings, including the quantified tax loss, to the Commissioner for prior approval to initiate investigation or closure of inquiry without further investigation.
- The Commissioner, after reviewing inquiry findings, may either approve the investigation, request further information, or reject the initiation of the investigation.

Section 37A

Revised framework for inquiry, investigation and arrest

- Once approved, the inquiry officer shall complete the investigation within 3 months and prepare an investigation report to be presented before the competent court. A three-member committee notified by the Chairman may authorize the Commissioner to issue warrant of arrests if it satisfies the conditions.
- Officers may arrest individuals suspected of tax fraud or prosecutable offenses, with prior Commissioner approval and after obtaining an arrest warrant from Special Judge.
- Where immediate arrest is necessary to prevent an accused from evading the process of law or prior approval is impracticable, the officer may arrest without prior approval and promptly report to the Commissioner with a summary of material facts and grounds of arrest.
- If the Commissioner finds the arrest under subsection (2) was without sufficient evidence or made with mala fide intent, he may order the immediate release of the accused and refer the matter to the Chief Commissioner for a fact-finding inquiry.
- Where tax fraud involves a company: directors, CEO, CFO or by whatever name called, that are personally responsible may be arrested, without absolving the company's liability. All arrests must follow the Code of Criminal Procedure, 1898 unless inconsistent with the Act, 1990 and abettors may also be arrested with the Commissioner's approval.

Section 37B

Procedure on arrest of a person

The Finance Bill had proposed substituting Section 37B to streamline procedures following arrest, aligning them with the investigation phase. The Finance Act, 2025 has further revamped this section to include:

- Upon arrest, the officer must inform the Special Judge and produce the person within 24 hours, or before the nearest Judicial Magistrate if no Special Judge is nearby.
- The Special Judge or Magistrate may grant bail, authorize detention, or remand the person to Inland Revenue custody for up to 14 days if necessary for investigation.
- The investigating officer must record all arrest details in a "Register of Arrests and Detentions" and proceed with the investigation.
- If insufficient evidence is found, the person must be released on bond, otherwise, the Special Judge may proceed with trial.

Section 38

Authorised officers to have access to premises, stocks, accounts and records

(1) Any officer authorised in this behalf by the Board or the Commissioner shall have free access including real-time electronic access to business or manufacturing premises, registered office or any other place where any stocks, business records or documents required under this Act are kept or maintained belonging to any registered person or a person liable for registration or whose business activities are covered under this Act or who may be required for any inquiry or investigation in any tax fraud committed by him or his agent or any other person; and such officer may, at any time, inspect the goods, stocks, records, data, documents, correspondence, accounts and statements, utility bills, bank statements, information regarding nature and sources of funds or assets with which his business is financed, and any other records or documents, including those which are required under any of the Federal, Provincial or local laws maintained in any form or mode and may take into his custody such records, statements, diskettes, documents or any part thereof, in original or copies thereof in such form as the authorised officer may deem fit against a signed receipt.

Section 38

Authorised officers to have access to premises, stocks, accounts and records

(2) The registered person, his agent or any other person specified in sub-section (1) shall be bound to answer any question or furnish such information or explanation as may be asked by the authorised officer.

(3) The department of direct and indirect taxes or any other Government department, local bodies, autonomous bodies, corporations or such other institutions shall supply requisite information and render necessary assistance to the authorised officer in the course of inquiry or investigation under this section.

(4) For the purpose of sub-section (1), the Board may make rules relating to electronic real-time access for audit or a survey of persons liable to tax. **errs to have access to premises, stocks, accounts and records**

Section 38A

Power to call for information

The Commissioner may, by notice in writing, require any person, including a banking company, to furnish such information or such statement in connection with any investigation or inquiry in cases of tax fraud, as may be specified in such notice:

Provided that the Commissioner may require any regulatory authority to provide information concerning the licenses and authorizations issued by it.

Section 38B

Obligation to produce documents and provide information

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any person required to maintain the record under the Act, on demand by an officer, not below the rank of an Assistant Commissioner Inland Revenue, by notice in writing, as and when specified in the notice, shall,—

(a) produce for examination, such documents or records which the officer of Inland Revenue considers necessary or relevant to the audit, inquiry or investigation under the Act;

(b) allow the officer of Inland Revenue to take extracts from or copies of such documents or records; and

(c) appear before the officer of Inland Revenue and answer any question put to him concerning the documents and records relating to the audit or inquiry or investigation referred to in clause (a) above.

Section 38B

Obligation to produce documents and provide information

(2) An officer of Inland Revenue conducting an audit, inquiry or, as the case may be, an investigation under the Act, may require in writing any person, department, company or organization to furnish such information as is held by that person, department, company or organization, which, in the opinion of the officer of 559[Inland Revenue], is relevant to such audit, inquiry or investigation.

(3) The Board may require, in writing, any person, department, company or organization, as the case may be, to provide any information or data held by that person, department, company or organization, which, in the opinion of the Board, is required for purposes of formulation of policy or administering the Customs, Sales Tax, Federal Excise or Income Tax.

(4) Every person, department, company or organization shall furnish the information requisitioned by the Board or the officer of Sales Tax under sub-section (2) or (3), within the time specified in the notice issued by the Board or, as the case may be, the officer of Inland Revenue.

Section 38B

Obligation to produce documents and provide information

(5) Notwithstanding anything contained in any other law for the time being in force, the Commissioner may, by notice in writing, require any Internet Service Providers, Telecommunication Companies and Pakistan Telecommunication Authority, to furnish subscriber's information pertaining to the Internet Protocols in connection with any inquiry or investigation in cases of tax fraud, as may be specified in such notice.

Section 40

Searches under warrant

(1) Where any officer of Inland Revenue has reason to believe that any documents or things which in his opinion, may be useful for, or relevant to, any proceedings under this Act are kept in any place, he may after obtaining a warrant from the magistrate, enter that place and cause a search to be made at any time.

(2) The search made in his presence under sub-section (1) shall be carried out in accordance with the relevant provisions of the Code of Criminal Procedure, 1898 (V of 1898).

Other Enabling Provisions

Searches under warrant

- Section 37- Power to summon persons to give evidence and produce documents in inquiries under the Act.
- Section 40B- Posting of Inland Revenue Officers
- Section 40C- Monitoring or Tracking by electronic or other means

Tax Assessments

Section 11D- Best judgment Assessment

(1) Where a person,

- a) fails to furnish a sales tax return in response to notice under sub-section (2A) of section 26; or
- b) fails to produce before the officer of Inland Revenue not below the rank of Assistant Commissioner under sections 25 or 38A, accounts, documents and records required, or any other relevant document or evidence that may be required by him, the officer of Inland Revenue not below the rank of Assistant Commissioner may, after a notice to show cause to such person, based on any available information or material and to the best of his judgment, make an assessment of tax payable or refund due and also charge penalty and default surcharge.

(2) For the purposes of clause (b) of sub-section (1), the officer of Inland Revenue may also disallow or reduce a registered person input tax on goods if the registered person is unable, to provide invoice or other record or evidence of the transaction or circumstances giving rise to such claim.

Tax Assessments

Section 11D- Best judgment Assessment

(3) Where a best judgment assessment has been made due to default of clause (a) of sub-section (1) and the person files the return within sixty days of issuance of order under this section thereafter and pays the amount of tax payable along with default surcharge and penalty, the notice to show cause and the order of assessment shall abate.

(4) Notwithstanding anything in sub-section (1), where the Federal Board of Revenue has specified conditions for the purpose of determination of minimum tax liability in respect of a person who is required to file return but who fails to file such return, the Officer of Inland Revenue shall determine such liability of the registered person in accordance thereof.

(5) Notwithstanding anything contained in this section, in case of person who is liable to be registered under clause (25) of section 2 based on tax withheld under section 236G of Income Tax Ordinance, 2001 (XLIX of 2001) and does not furnish a return upon notice, an officer of inland revenue may assess sales tax liability on the value addition on reasonable grounds including information obtained from the purchase data under section 236G of Income Tax Ordinance, 2001 (XLIX of 2001).

Tax Assessments

Section 11E- Assessment of tax and recovery of tax not levied or short levied or erroneously refunded

(1) Where due to any reason, any tax or charge has not been levied or short levied or where the officer of Inland Revenue not below the rank of Assistant Commissioner suspects on the basis of audit or otherwise that due to any reason a person has-

- (a) not paid or short paid due sales tax;
- (b) claimed input tax credit or refund which is not admissible; or
- (c) has obtained an amount of refund not due,

the officer of Inland Revenue after issuing a show cause notice to the person shall pass an order to determine and recover the amount of tax unpaid or short paid, inadmissible input tax or refund, or unlawful refund obtained and shall also impose penalty and default surcharge in accordance with sections 33 and 34.

Provided that this section shall not be applicable to the extent of proceedings initiated under section 37A of the Act.

Tax Assessments

Section 11E- Assessment of tax and recovery of tax not levied or short levied or erroneously refunded

(2) For the purposes of sub-section (1), the officer of Inland Revenue may also disallow input tax on goods or services if the taxpayer is unable, without reasonable cause, to provide a receipt, or invoice or other record or evidence of the transaction or circumstances giving rise to such claim.

(3) Where a tax or charge has not been levied under clause (a) of sub-section (1), the amount of tax shall be recovered as tax fraction of the value of supply.

Tax Assessments

Section 11F - Failure to withhold sales tax

Where any person, required to withhold sales tax under sub-section (7) of section 3, fails to withhold the tax or having withheld the tax fails to deposit the same in the prescribed manner, the officer of Inland Revenue not below the rank of Assistant Commissioner shall after a notice to such person to show cause pass an order to determine and recover the amount in default and impose penalty and default surcharge under section 33 and 34.

Tax Assessment - Limitation provisions

- No order will be made by an officer of Inland Revenue unless a notice to show cause is given within five years of end of the financial year in which the relevant date falls
- Tax department will specify default and the grounds on which it is intended to proceed against him
- Tax department will take into consideration the representation made by such person and provide him with an opportunity of being heard.
- Order is required to make within 180 days of issuance of show cause notice or within such extended period as the Commissioner may fix up to 90 days.
- Any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the taxpayer not exceeding 60 days will be excluded from the computation of the period.

Tax Assessment - Other provisions

- Relevant date
 - a) the time of payment of sales tax or charge as provided under section 6;
 - b) the time of payment for goods or services on which sales tax was to be withheld under sub-section (7) of section 3; and
 - c) in a case where sales tax or charge has been erroneously refunded, the date of its refund
- Section – 11A - Short paid amount recoverable without notice
- Section – 11B - Limitation for issuing orders in certain cases (appeal effect)
- Section – 11C - Power of tax authorities to modify orders
- Section – 45A - Power of Board or Commissioner to call for record

Tax Assessment- Legal Issues

- Onus to prove taxable supply – on the revenue; credit entry in bank statement or receipt by taxpayer may not be simply assumed against the taxable supply
- Time limitation provided under the law is mandatory or directory
- Reasonable opportunity of being heard- three opportunities of at least fifteen days before assessment
- Ex-parte order – not to be discretionary, should be passed keeping in view facts available on record
- Ex-parte Judgment should be reserved /passed on date fixed for hearing
- Reasons for extension in time for assessment are to be recorded within time limitation and should be available on assessment record
- When basic action/SCN is defective, entire proceeding is illegal
- Power to call for records in respect of taxable services provided in other jurisdictions

Show Cause Notice - Pre-requisite

Show Cause Notice Not Casual Document; Its Ingredients as Held by Tribunal in Case at 2017 PTD (Tribunal) 70

- Each Aspect of Allegations with Complete Details
- Time Limitation,
- Jurisdiction,
- Detail of Sales Tax Liability Framed [Complete Charge Sheet]
- Relevant Sections & Legal Provisions; Not to have Multiple Sections
- Complete Particulars of Assessing Officer, Signature, Stamp, etc.
- Independent Judicial Mind
- Allegations Levelled to be Specific & Not Vague
- Proper Opportunity of Hearing, etc.

Replying to Show Cause Notice

Thinking Stage:

- Examination of F. Statements for the Period covered under SCN
- Other information-Website, Production Process & Capacity, Products Marketed, Licensing conditions / regulations, industry / sectoral information, Net Tax Position etc.
- Discussion with client on departmental observation
- Examining Records before submission
- Banks Statements-Recon with declared sales & other issues
- Identifying the issues and do legal research

Composing Stage:

- Decide the layout of reply- Preliminary objection/ Facts/ Numbering / paragraphing
- Doctrines, relevant provisions case laws to be quoted
- Evidence /Documents to be appended with the reply

Replying to Show Cause Notice

Key Consideration:

- Whether SCN issued from proper jurisdiction
- Whether SCN is proper / is not vague
- Whether SCN issued within prescribed Time Limit
- Whether SCN has been properly served
- Whether information based on which SCN has been shared
- Computational Accuracy
- Interpretational Issues

How to incorporate in reply:

- Reliance on “Principles of natural justice”
- Reliance on binding precedents
- Interpretational issue & supporting evidence

Replying to Show Cause Notice

- **Reliance on Principles of natural justice- Illustration:**

It is usual to seek extension for furnishing reply to any notice, however, tax authorities often issue an order without providing reasonable time to taxpayer for furnishing its reply and passes an order in haste. In this case, while seeking extension, we could refer CBR Circular letter C.No.7(36) DT-14/92 dated February 01, 1994 in following manner:

Without prejudice to the legality of your notice, CBR Circular letter C.No.7(36) DT-14/92 dated 01-02-1994, mandates that clear 15 days for compliance should be granted and three opportunities provided. Directions of CBR (FBR) are of binding nature as per Section 214 of the Income Tax Ordinance, 2001. Your honour has provided only ONE working days for compliance which is grossly in-sufficient and in clear violation of directions of the Board. The Hon High Court /ATIR in cases reported as 2014 PTD 1241, 2013 PTD 1385 have fully endorsed the said circular letter of FBR(CBR) and directed that 15 clear days should be provided for compliance to notices and any abridgement of the said time period would make the order as not tenable in eyes of law.

After insertion of Article 10A in the Constitution of Pakistan 1973, 'fair trial' and 'due process' are now fundamental rights of every citizen for 'determination of his civil rights and obligations'.

Replying to Show Cause Notice

- **Reliance on Binding Precedents- Illustration:**

It is an established principle that if the law requires that an action is to be done in a particular manner, there is no room to deviate from it, otherwise, any deviation in this regard would vitiate the whole proceedings. There is a plethora of judgments in this regard and reference may be made to the decision of honourable Supreme Court of Pakistan in case of "Khalid Saeed v. Shamim Rizwan and others" reported as [2003 SCMR 1505], wherein the Honourable Court while considering the impact of violation of non-observance of the method prescribed by law for doing an action in a particular manner or mode observed that if law had prescribed method for doing of a thing in a particular manner held that such provision of law is to be followed in letter and spirit and achieving or attaining the objective of performing or doing of a thing in a manner other than provided by law would not be permitted.

- **Reliance on Binding Precedents- Illustration:**

In case of Asst. Collector Vs Khyber Electric Lamps reported as 2001 SCMR 838 the august Supreme Court of Pakistan while examining the effect of non-mentioning of sub section of section 32 of Customs Act, 1969 held on page 842:

"..... It is well-settled proposition of law that a thing required by law to be done in a certain manner must be done in the same manner as prescribed by law or not at all."

Penal Provisions- General Principles

- Penalty- are introduced to deter non-compliance, discretionary powers, should be used keeping in mind the objective
- Each case is to be decided on its own merits
- Penalty provisions to be used as deterrence measure to compel taxpayer for compliance and not as revenue measure
- No loss of revenue no penalty
- Should be imposed only in case of willful default, mens rea- guidance by the SCP in case of DG Khan Cement-[2004PTD 1179]

05

Tax Litigation, Other Alternatives & Appeal hearing

Tax litigation

Tax laws prescribe means of litigation

Besides, there are some other modes also available.

- Appeals under the tax laws:
 - Income Tax Ordinance 2001; and
 - Sales Tax Act, 1990
- Reference to High Court
- Alternative Dispute Resolution
- Federal Tax Ombudsman

Appeal

- The right of appeal is a statutory right given by statute defining its limits. Appeals arise on disagreement between the taxpayers and the tax collectors regarding facts, figures or interpretation of law, quantification of taxable income, tax liability, levy of default surcharge, penalties, etc.
- The word “Appeal” is derived from the Latin word “appell are” 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 judicial examination by a higher court on the decision of sub-ordinate court/ authority
 - right of entering a superior Court for seeking aid and intervention to redress the error of the sub-ordinate court/ authority
 - complaint to a higher tribunal, seeking the error or injustice to be corrected/ reversed.
 - continuation of assessment till all forums of appeal are exhausted

Appeal

Section 127 & 131

- To resolve disagreements, law lays down the procedure giving a taxpayer the right of appeal before the Appellate authorities i.e. Commissioner Inland Revenue (Appeals), and Appellate Tribunal Inland Revenue .
- **Time limit to file appeal**

Appeal against the order passed by	Time limit of filing appeal	The appeal is made to
Commissioner	30 Days	Commissioner (Appeals)
Commissioner (Appeals)	30 Days	Appellate Tribunal

- Tax law provides that if the appeal is not filed within the specified time, the Commissioner (Appeals)/ the Appellate Tribunal are empowered to accept an appeal on application explaining the reasons for not filing the appeal in time.

Reference

Section 133

- To resolve disagreements, law lays down the procedure giving a taxpayer the right of reference before the High Court, however, it would be limited to question of law

Reference against the order passed by	Time limit of filing reference	The reference is made to
Appellate Tribunal	60 Days	High Court
High Court	60 Days	Supreme Court

Appeal

Appeal to Commissioner (Appeals) – Section 127

Appeal can be filed 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)

Appeal

Commissioner (Appeal)'s power to grant stay – Section 128

- Commissioner (Appeals) can grant stay from recovery of tax demand for a period not exceeding 30 days in aggregate, extendable for further 30 days provided that the appellate order is passed within the said 30 days.
- For barring Commissioner to make recovery till decision by the Commissioner (Appeals), the Taxpayer has the option of paying 10% of the impugned tax demand and file appeal before Commissioner (Appeals).

Appeal

Appeal to Appellate Tribunal - Section 131

- Appellate Tribunal, second forum of appeal and the final fact finding authority.
- Taxpayer/ Commissioner, if not satisfied with the order of the Commissioner (Appeals), either or both, can file a further appeal before the Appellate Tribunal.

Appeal

Appellate Tribunal's power to grant stay – Section 131

- Appellate Tribunal empowered to grant stay from recovery of tax demand for a period of 90 days.
- However, where the appeal is not decided within the statutory period by the Appellate Tribunal, the stay order shall not cease to have effect until finalization of appeal by the ATIR

Appeal

Power to entertain new ground – Sections 128, 129 & 131

- Appellate Authorities are empowered to entertain new ground of appeal not taken earlier, if application for seeking permission is filed before the hearing of appeal.
- Appellate Authority if satisfied that the additional ground of appeal is very much related to the case and omission was not willful or unreasonable, may accept the additional ground of appeal.
- A legal issue can be raised at any stage before the hearing of an appeal is concluded.

Appeal

Reference to High Court – Section 133

- The taxpayer or Commissioner, if not satisfied with the decision of Appellate Tribunal, may prefer application to the High Court only on question of law arising from the order.
- The High Court, upon hearing a reference, 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

Appeal to Supreme Court

- Appeal can be filed before the Supreme Court against 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 [ADR] – Section 134A / S 47A

- As the name suggests, it is an alternative mechanism to resolve any tax dispute pending before a court of law or an appellate authority.
- 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.
- As scope for today's discussion is solely on Appeals, thus, ADR can be discussed later as a separate topic at some other time.

Federal Tax Ombudsman

Federal Tax Ombudsman [FTO] resolve taxpayers' complaints and provide relief to the public by carrying out independent investigations about maladministration by functionaries administering the federal taxes.

FTO takes cognizance on:

- Complaint is filed by any aggrieved person; or
- References received from:
 - President of Pakistan;
 - Supreme Court of Pakistan;
 - High Courts;
 - Senate;
 - National Assembly; and
 - Own Motion.

As scope for today's discussion is solely on Appeals, this can be discussed later as a separate topic at some other time.

Procedure in Appeal

- Notice to the parties (addressing the Respondent).
- The statute has conferred discretionary powers to entertain new grounds of appeal not taken up earlier before the hearing of the appeal. The satisfaction of the Appellate authority that the omission of said ground was not will full or unreasonable.
- Pure question of law can be raised at any stage.
- Discretionary powers conferred on the Appellate authority to call for such particulars of the case or matters arising in appeal or cause further inquiry to be made by the Appellate authority.
- Powers conferred not to consider documentary material or evidence, which was not placed / produced before the Adjudicating authority unless the Appellate authority is satisfied that the Appellant was prevented from sufficient cause from producing such material or evidence before the authority. Since the language is in negative, it is always considered to be mandatory – significance of the term “sufficient cause” reiterated.

Drafting of written arguments

- Facts to be narrated clearly. (Remember Law applies on the facts not vice versa)
- Grievance to be narrated clearly.
- Relevant Statutory Provisions to be highlighted.
- How the order is wrong to be precisely explained on factual and legal plane. In case of facts, submission of the evidence which was earlier submitted in the Adjudication / Assessment proceedings.
- Judgments relied upon should be relevant.
- The relief being sought should be explained and prayed for.

Presentation of arguments & making pleadings

- Adhere Proper Dress Code
- Arguments be started with the permission of the appellate authority
- The opening statement is vital and must attract attention/ interest of the appellate authority
- Carry all relevant statutory books, copies of judgments and documents relied upon
- Narration of facts in concise manner with identification of the places in the impugned orders
- Facts of the case to be narrated first then the law (Law applies on the facts)
- Accuracy is the hallmark of advocacy – refer to correct sections, sub-section, clauses, sub-clauses, explanation, provisions, rules/ sub-rules. Remember You are truly assisting the appellate authority on the principle of accuracy
- Avoid blind reliance on case-laws – apply creative imagination – try to discriminate and attempt to distinguish facts and various aspects of any caselaw
- Cite a few well-chosen case laws intelligently – precheck these are not overruled
- Avoid concealing the facts, misleading the appellate authority

Presentation of arguments & making pleadings

- Be brief, logical and to the point – lengthy & irrelevant arguments never pay
- Tactfulness Vs tactlessness – knowing the judge as good as knowing the law
- Give-up when the weakness of your arguments is noticed
- Before citing, the facts of the reported case-laws relied upon should be thoroughly mastered. Facts make all the difference
- Do not continue arguing when you find a judge in your favour
- Preliminary objections if any should be taken with the permission of the appellate authority at earliest possible opportunity
- Give full attention to the points & queries raised by the appellate authority
- If there is difference of opinion on any points, the same may be pointed out to the appellate authority with most humility & respect
- Attitude towards the opposite counsel should be forbearing & respectful and not sarcastic
- Punctual attendance earns you respect of the appellate authority

Thank you