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## **KTBA criticises denial of tax refund adjustments**

**KARACHI:** The tax practitioners have criticised the issuance of illegal notices by the office of Inland Revenue to deny adjustment of tax refunds.

The Karachi Tax Bar Association (KTBA) in a letter to the Federal Board of Revenue (FBR) chairman on Monday sought urgent intervention for prompt resolution and for the sake of avoidance of any unwarranted potential litigation.

The KTBA highlighted the legal position regarding the provisions of Section 221 of Income Tax Ordinance, 2001, which empower a commissioner to amend any order passed by him.

“The issue of adjustment of previous years refund, however, does not come within the ambit or scope of rectification of mistake as provided under Section 221 of the Ordinance,” the tax bar said.

The bar said that the purpose of this letter is to apprise about the illegality, which has been allowed to permeate through the whole process.

“It is by the virtue of this deeming provision and the fiction of law, the return filed is treated as an assessment order, which however, by any stretch of imagination, cannot be treated as formal assessment order, which would have factually been passed by a CIR. This dictum is validated by the superior courts in a number of cases,” the KTBA added.

The KTBA said that it completely endorsed that any shortfall of tax payment ought to be made at full and in case any erroneous adjustment of tax refunds is proved, it should be recovered and paid without any resistance, but only according to the given and due process of law.

“Be that as it may, if there was any shortfall in the return including a short payment of tax and/or incorrect adjustment of tax or incorrect adjustment previous year refund, the correct course of action should have been issuance of notice under sub-section (3) of section 120 of the Ordinance, which provides that where a return is not complete, the CIR shall issue a notice to the taxpayer informing him of the deficiencies in the return of income including short payment of tax payable and asking him to provide such information.”

Where no such notice has been issued in the first place, the tax return filed will be taken to be complete and without any deficiencies and, therefore, any assumption of jurisdiction under Section 221 of the Ordinance would fundamentally be incorrect, the bar said.

It should be abundantly clear that the current exercise is without due sanction of law and against the reported judgments of Superior Courts, it added.