

IR officers' bid to deny tax refund adjustment criticized

Karachi Tax Bar Association (KTBA) on Monday has strongly criticized the bid of officers of Inland Revenue (IR) to reject adjustment of tax refund against liability.

The tax bar in a letter to the chairman of the Federal Board of Revenue informed that a large number of notices for tax returns filed for tax year 2021 were issued by the IR officers for rectification under Section 221 of Income Tax Ordinance, 2021.

The tax bar informed that the legal position of provisions of Section 221 of the Ordinance, 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 for under Section 221 of the Ordinance. Section 221 of the Ordinance, states that a Commissioner may rectify "ANY ORDER PASSED BY HIM", while in the instant case, no formal order, using application of mind, has been passed by the learned Commissioner Inland Revenue himself or by any of his learned predecessor. "It would not be out of context to elaborate here that clause (b) of sub-section (1) of section 120 of the Ordinance provides that a return filed to be taken as an assessment order passed by the Commissioner Inland Revenue."

The purpose of this letter is to apprise your office, of the illegality, which has been allowed to permeate through the whole process, the KTBA said.

It is by 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.

It further said it would equally be critical to highlight here that refund becomes due when the assessment order under Section 120 of the Ordinance come into existence and thereafter the refunds of previous years can very much be adjusted against the liability of current year. This legal notion has been endorsed by the judgements of the superior courts as well.

It is a trite law, which the superior courts have held time and again that only those mistakes, of either fact or law, pointed out in the Assessment Order will be treated as mistake liable for rectification for which no further argument or further investigation is required. In case of any controversy, whether factual or legal, exists or where are more than one opinion on the matter, the same does not fit squarely in the definition of "Mistake" liable for rectification as enunciated by courts.

Therefore once after it has been cleared that a Deemed Order cannot be rectified and then the Courts and consequently the Board itself has allowed to adjust the refunds, the mistake pointed in the Notices cannot be called as A “Mistake”. A plain perusal of notices reveals that the Commissioners have embarked upon verification and further investigation or to put in other words necessitates verification and further investigation before any conclusion is drawn. It cannot simply be called a case of Rectification of Mistake. Hence, it falls out of the scope of rectification of mistake given under section 221 of the Ordinance.

At this juncture we feel it imperative to reposition the stance of our Tax BAR that we completely endorse that any short fall of payment of tax is ought to be made at full and where there has been proved any erroneous adjustment of tax refunds, the same should very much be recovered and paid without any resistance, but only and strictly 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.

“You would appreciate that 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. ”Based on above, it should be abundantly clear that the current exercise is without due sanction of law and against the reported judgments of Superior Courts.