

KTBA takes strong exception to FBR's show-cause notices

KARACHI: The Federal Board of Revenue (FBR) has started issuing notices, asking the taxpayers to show why the tax returns filed for TY 2021, however, it is taken as deemed assessments under the Income Tax Ordinance, 2001.

Talking to the Business Recorder, Rehan Jafri, President, Karachi Tax Bar Association (KTBA) said that the show cause notices, which were being issued to ask the taxpayers to show why the tax returns filed for TY 2021, were taken as deemed assessments under the Ordinance.

He said that provisions of Section 221 of the Ordinance empowered a commissioner to amend any order passed by him. The issue of adjustment of the previous year's refund, however, does not come within the ambit or scope of rectification of mistake as provided under Section 221 of the Ordinance.

The 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 the application of mind, has been passed by the learned Commissioner Inland Revenue ("CIR") 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 CIR.

Jafri said that he sent the letter to the chairman FBR, informing him about the issue. He said that the purpose of the letter was nothing but to inform the FBR chairman about the illegality, which was allowed to permeate through the whole process.

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 the imagination, cannot be treated as formal assessment order and would have factually been passed by a CIR.

This dictum is validated by the superior courts in a number of cases. A very relevant judgment in this regard would be that given by LHC wherein the ratio has been settled (W.P No. 13284 of 2012).

He said that if the illegality was not arrested at the beginning of the process, it would render the whole exercise to end in the inevitable litigation between the taxpayer and the department, which could well be avoided now, adding that the refund became due when the assessment order under Section 120 of the Ordinance came into existence and thereafter the refunds of previous years could very much be adjusted against the liability of current year. This legal notion has been endorsed by the judgments of the superior courts as well.

He said the KTBA completely endorsed that any shortfall of payment of tax was ought to be made in full and if any erroneous adjustment of tax refunds was proved, the same should be recovered and paid without any resistance, but only and strictly according to the given and due process of law.

Moreover, 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's refund, the correct course of action should have been the 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.

KTBA in its letter urged the FBR that no such notice has been issued in the first place, the tax return filed would be taken to be completed and without any deficiencies and, therefore, any assumption of jurisdiction under Section 221 of the Ordinance would fundamentally be incorrect and requested to withdraw these notices, creating unnecessary agony and distress to the taxpayers of the country.