

**10th KTBA CASE LAW UPDATE
(July 20, 2023)**

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Dear Members,

A brief update on a recent judgment on “Assessment order under Section 120 of the Income Tax Ordinance, 2001 (the Ordinance) once amended under Section 122(5A) of the Ordinance cannot be further amended by a lower ranked officer under section 122(1)/(5) of the Ordinance” by Appellate Tribunal Inland Revenue (ATIR), Lahore is being shared with you for your knowledge.

This update is in line with the efforts undertaken by our “CASE LAW UPDATE COMMITTEE” apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Zafar Ahmed)

President

July 20, 2023

(M. Mehmood Bikiya)

Hon. General Secretary

July 20, 2023

**10th KTBA CASE LAW UPDATE
(July 20, 2023)**

ASSESSMENT ORDER UNDER SECTION 120 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE) ONCE AMENDED UNDER SECTION 122(5A) OF THE ORDINANCE CANNOT BE FURTHER AMENDED BY A LOWER RANKED OFFICER UNDER THE PROVISIONS OF SECTION 122(1)/(5) OF THE ORDINANCE

Appellate Authority: Appellate Tribunal Inland Revenue (ATIR), Lahore

Petitioner: Mr. Usman Ali

Section: 122(5A), 122(1)/(5), 111(1)(d)

Detailed judgment was issued on March, 24 2023 [ITA No. 1344/LB/2022].

Background: The appellant's deemed assessment order was initially amended by the Additional Commissioner Inland Revenue (AdCIR) under Section 122(5A) of the Ordinance to tax the sale of plots as unexplained assets. The said order was subsequently upheld by the Commissioner (Appeals), Gujranwala. Subsequently, the Assistant/Deputy Commissioner Inland Revenue (ACIR/DCIR) conducted the amended assessment proceedings under Section 122(1)/(5)(ii) of the Ordinance and once again amend the deemed assessment order to tax the credit entries flowing into the appellant's bank accounts received on sale of the very same plots, which were initially taxed as unexplained assets.

The Appellant challenged the amended assessment order passed under Section 122(1)/(5) of the Ordinance on the grounds that since the deemed assessment order has been amended by the Additional Commissioner under Section 122(5A) of the Ordinance, the same stands merged into the amended assessment order, which further stands merged into the appellate order passed by the CIR(A) and hence the same is non-existent and therefore cannot be further amended under Section 122(1)/(5) of the Ordinance.

Decision of the Court:

First Ruling of the Court: Since the AdCIR has already amended the deemed assessment order under Section 122(5A) of the Ordinance, the ACIR or DCIR being junior in hierarchy to the AdCIR cannot make any further amendment in it keeping in view the special provisions of Section 122(5A) of the Ordinance. If any such further amendment is required, it could only be made by an AdCIR under Section 122(5A) of the Ordinance. The subsequent amended assessment order passed by the ACIR/DCIR is not tenable due to jurisdictional defect.

Second Ruling of the Court: Since the deemed assessment order under Section 120 of the Ordinance is already merged into the amended assessment order passed under Section 122(5A) of the Ordinance which was further merged into the appellate order of the Commissioner (Appeals), both the prior orders (i.e. the deemed assessment order and the amended assessment order) cease their existence due to their merger into the appellate order and are no more available for amendment even by the AdCIR himself as barred by the doctrine of merger. Accordingly, any non-existent order cannot be amended by the ACIR/DCIR in exercise of the powers for further amendment given under Section 122(4) of the Ordinance.

Third Ruling of the Court: The Appellate Tribunal further noted that the AdCIR has exercised the powers under Section 122(5A) of the Ordinance delegated to him by the Commissioner under Section 210(1A) of the Ordinance, which are neither delegated to anyone else nor it could be delegated to any Officer Inland Revenue below in rank to him. Therefore, exercise of jurisdiction for amendment of deemed assessment by the ACIR/DCIR under Section 122(1)/(5) of the Ordinance is illegal and unlawful as having already amended by the AdCIR under Section 122(5A) of the Ordinance.

Conclusion: The Tribunal observed that since the addition to income is made by the ACIR/DCIR without any material justification and lawful jurisdiction, therefore it merits simply deletion and ordered accordingly.

NOTE: Members are requested to read the complete order attached herewith.

DISCLAIMER:

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings or project would not be binding on KTBA.

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A brief update on a recent judgment on “**Assessment order under Section 120 of the Income Tax Ordinance,2001 (the Ordinance) once amended under Section 122(5A) of the Ordinance cannot be further amended by a lower ranked officer under section 122(1)/(5) of the Ordinance**” by Appellate Tribunal Inland Revenue (ATIR), Lahore is being shared with you for your knowledge.

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Best regards

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President

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