

COMMISSIONER INLAND REVENUE (CIR)

Definition:

“Commissioner Inland Revenue means a person appointed to be a Commissioner Inland Revenue under section 208 of the Income Tax Ordinance. It also includes any authority vested with all powers and functions of Commissioner”.

Appointment:

Federal Board of Revenue is the appointing authority of Commissioner Inland Revenue.

Authority:

Commissioner Inland Revenue has both executive and judicial power. He is responsible for the proper administration of the area assigned to him. He also enjoys the judicial powers over his subordinates. He can revise the orders passed by his subordinates.

Jurisdiction:

If Commissioner Inland Revenue is appointed for a specific area, he will perform his functions in that particular area. If Commissioner Inland Revenue is given no specific area then he will perform his functions for specific person or area as the Federal Board of Revenue may direct him.

Subordinates:

The following authorities are subordinate to the CIR.

- Additional Commissioners;
- Deputy Commissioners;
- Assistant Commissioners
- Inland Revenue Officers;
- Inland Revenue Audit Officers;
- Superintendents; and
- Auditors
- Inspectors

The powers and functions of CIR can be classified under following categories:

- Powers for appointment.
- Powers over taxpayer.
- Powers for return and assessment.
- Powers for tax recovery.

POWERS FOR APPOINTMENT

(1) **Appointment of Subordinate Authority:**

CIR can appoint any of his subordinate authority for assistance with the approval Federal Board of Revenue.

(2) **Appointment of Expert:**

CIR can appoint an expert for the purpose of audit of accounts of any person and valuation of assets.

(3) **Translator:**

CIR can appoint a translator in case the accounts are kept in language other than Urdu and English.

POWERS OVER TAXPAYER

(4) **Salary in Arrears:**

CIR allows an employee to pay tax on salary received in arrears in the tax year in which services were rendered.

(5) **Tax Concession:**

CIR may allow an employee to pay tax on his retirement payments as per normal procedure or average rate of tax based on the three preceding tax years.

(6) **Method of Accounting / Stock Valuation:**

CIR can allow a person to change his method of accounting and stock valuation for tax matters.

(7) **Permission of Tax Year:**

CIR can allow a person to use special tax year instead of normal tax year and vice versa. Moreover, CIR may impose conditions while permitting special or normal tax year.

(8) **Transaction between Associates:**

CIR distributes, apportions or allocates incomes, deductions or tax credits in respect to any transaction between associates.

POWER OF RETURN AND ASSESSMENT

(9) **Filing Return:**

CIR can require a person or his representative to furnish return of total income.

(10) **Extension of Time for Filing of Return:**

CIR can extend the time for filing the return of total income by a taxpayer.

(11) **Discontinuation of Business:**

CIR can require a person to file return of total income if the business is discontinued and the person has not furnished his return.

(12) Wealth Statement:

CIR may require any taxpayer to provide his wealth statement.

(13) Assessment Order:

CIR can make assessment order if the taxpayer has not furnished his return of total income.

(14) Amended Assessment Order:

CIR can make amended / provisional assessment order incase of any taxpayer.

(15) Rectification of Mistakes:

CIR has power to rectify the mistake of assessment order whether passed by him or his subordinates.

(16) Selection for Audit:

CIR can select any person for the purpose of tax audit.

POWERS FOR RECOVERY OF TAX

(17) Necessary Actions:

CIR can take all the necessary actions for the recovery of tax from a taxpayer. e.g., Recovery of tax from a person who holds money on the behalf of taxpayer.

(18) Necessary Notices:

CIR can issue all notices necessary to obtain information or evidence.

(19) Penalties:

CIR has the power of imposing penalty for different defaults by the taxpayer.

(20) Default Surcharge:

CIR has the power to impose the default surcharge if the taxpayer fails to pay the tax by due date.

(21) Exemption Certificate:

CIR has the power to issue exemption certificate to a taxpayer.

(22) Refund of Tax:

CIR adjusts the amount of excess tax paid by a taxpayer and if there is any balance after the adjustment of any other tax liability, refunds the same to the taxpayer.

(23) Unexplained Income or Asset:

CIR may charge tax on the value of any unexplained income or asset and determines the value if it is declared less than the fair market value.

- (3) Deputy Directors;
- (4) Assistant Directors; and
- (5) Any other officers.

The Board is the appointing authority for all officers in the Directorate. It shall specify the functions, jurisdiction and powers of the Directorate-General of Transfer Pricing.

APPELLATE TRIBUNAL

Definition:

“Appellate Tribunal means the Appellate Tribunal Inland Revenue established by the Federal Government under section 130 of the Income Tax Ordinance 2001.

Appointment:

The Federal Government is the appointing authority of appellate tribunal. His appointment is made under the provisions of Income Tax Ordinance 2001.

Regulation:

The following two regulations regulate the working of appellate tribunal:

- Appellate Tribunal Inland Revenue Rules 2010.
- Income Tax Ordinance 2001.

Judicial Authority:

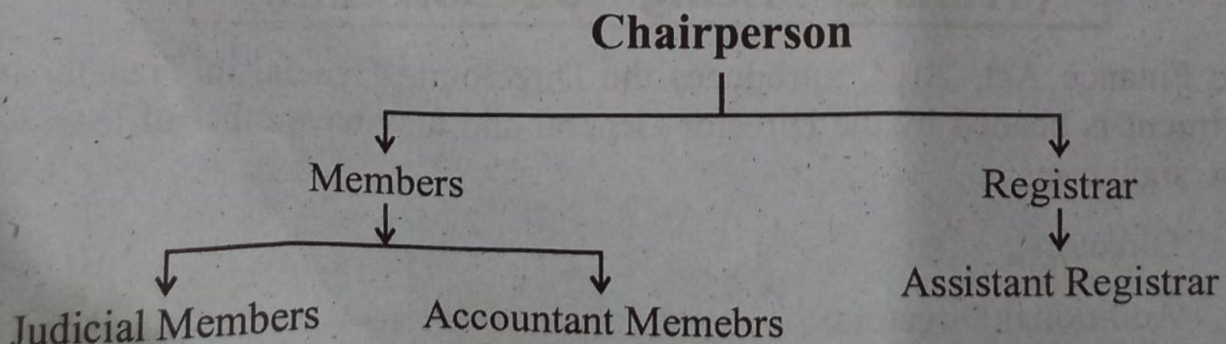
Appellate tribunal is the highest judicial authority of income tax department. The basic function of the Tribunal is to hear the appeal against the decisions of Commissioner (Appeals).

Second Court of Appeal:

Appellate tribunal is the second court of appeal. First the aggrieved party appeals to commissioner (appeals) for any tax dispute. If the either party is not satisfied with the decision of commissioner (appeal) then he moves to Appellate Tribunal.

Organization:

The organization and working of the tribunal can be explained with the help of following chart. Tribunal is established to exercise its functions under the Ordinance.



Chairperson:

The Federal Government appoints a member of the Tribunal as Chairperson (except in special circumstances, the person appointed should be a judicial member) for the proper functioning of ATIR.

Members:

ATIR consists of two types of members which are appointed by the Federal Government:

- Judicial
- Accountant

Qualification of Members

Judicial Members:

- He is or has been district judge and is qualified to be judge of high court.
- He is or has been advocate of high court and is qualified to be judge of high court.

Accountant Member:

- He may be an officer of Income Tax group equivalent to Chief Commissioner Inland Revenue in rank.
- He may be a Commissioner Inland Revenue or Commissioner Inland Revenue (Appeals) with a least 3 years experience or a collector.
- He may be a Chartered Accountant or Cost & Management Accountant having practical or professional experience of 10 years or more.

Numbers of Members:

Law does not fix the number of members. Federal government may appoint as many judicial and accountant members as it thinks necessary.

Registrar and Assistant Registrars:

A full time registrar and assistant registrars receive appeals regarding tax disputes. Full time registrar is subordinate to Chairperson. He looks after the administrative affairs of the Tribunal in addition to his basic functions of entertaining the appeals and fixing the dates for hearing. His office is situated in Islamabad whereas assistant registrars are posted in Karachi and Peshawar.

FUNCTIONING OF APPELLATE TRIBUNAL

The functioning of the Appellate Tribunal is as under:

Formation of Benches:

The chairperson of the Tribunal may constitute benches to hear the appeals filed against the order of CIR (appeals). A bench normally consists of 2 members. However chairperson may also constitute a larger bench. A bench usually consists of equal number of judicial and accountant members but in certain cases the number of one type

of members may exceed the other type by one. The Chairperson is also empowered to constitute as many benches, as he may deem necessary to hear the cases. The Federal Government may authorize the Chairperson or any one member of the Tribunal to alone hear and decide the case.

Decision:

In case of larger bench, if the members of a bench differ in opinion on any point, the majority decision is accepted but if the members are equally divided then the point in dispute is referred to the chairperson of the Tribunal. In such cases, he appoints one or more other members of the tribunal to hear the disputed point. The case is then decided according to the opinion of majority members including those who first heard.

Final Fact Finding Authority:

The decision of Tribunal on a point of fact is final and no party (appellant or dependent) can challenge it in higher court. However, if the decision involves a point of law then it may be referred to the High Court.

Procedure of ATIR:

The ATIR has the power to regulate its own procedure of the Benches of the Tribunal. It can also itself decide all the matters arising out of discharge of its functions including the places at which the Benches shall hold their sittings.

APPEALABLE ORDERS / DECISIONS:

[Section 127(1)]

The Income Tax Ordinance allows a taxpayer to file an appeal against any of the following orders issued by the Commissioner or OIR:

- Assessment of a person who has not furnished the return. [Section 121]
- An amendment in assessment by the Commissioner. [Section 122]
- Assessment of non-resident carrying on shipping business. [Section 143]
- Assessment of non-resident carrying on air transport business. [Section 144]
- Holding a person liable to pay tax collected or deducted but not deposited under the law. [Section 161(1)]
- For recovery of tax from a person from whom it was not collected or deducted. [Section 162(1)]
- Determination of amount refund or adjustment of excess tax. [Section 170]
- Declaring a person as representative of a non-resident person. [Section 172(3)]
- Penalty imposed due to failure in furnishing a return or statement, concealment of income, failure to maintain records or obstructing an income tax authority etc. [Section 182]
- Orders to pay penalty, additional tax / default surcharge. [Section 205]
- Refusal to rectify a mistake pointed out by a taxpayer. [Section 221]
- Orders regarding enhancing the assessment or reducing a refund or increasing the tax liability of a taxpayer.

EXCEPTIONS (NOT APPEALABLE ORDERS):

The following orders passed by the Commissioner or an Officer of Inland Revenue are not appealable or an appeal against such orders cannot be filed:

- To produce books of accounts.
- To provide wealth statement.
- On charging default surcharge (additional tax).
- To obtain information or evidence etc.

APPEAL TO THE COMMISSIONER (APPEALS) [SECTION 127 TO 129]

The features of filing an appeal to the Commissioner (Appeals) are as under:

(1) Against the Order of Commissioner / Officer of Inland Revenue:

An appeal may be filed by a taxpayer only against the appealable orders of the Commissioner or an Officer of Inland Revenue with the Commissioner Inland Revenue (Appeal).

(2) Right of Appeal:

The first appeal to the Commissioner (Appeals) against the order of the Commissioner can be filed by a taxpayer only. If the Income Tax Department is not satisfied with the orders of the Commissioner, an appeal cannot be made.

(3) Time for Filing an Appeal:

The appeal with Commissioner (Appeals) must be filed within 30 days of the receipt of an appealable order.

(4) Delay in Filing the Appeal:

The Commissioner (Appeals) may admit appeal even after 30 days, if he thinks that there is a genuine reason for delay.

(5) Documents to be Submitted:

- (a) Prescribed form of appeal.
- (b) Grounds of appeal (i.e., brief summary of objections).
- (c) A copy of order.
- (d) Power of attorney in favour of the authorized representative.
- (e) Challan for appeal fee.

(6) Application Fee:

The prescribed fee shall be:

- (a) In case of an appeal against an assessment Rs. 1000.
- (b) In any other case:
 - (i) Rs. 1000 for a company.
 - (ii) Rs. 200 for other persons.

(7) Payment of Tax:

No appeal shall be made by a taxpayer against an order of assessment unless the taxpayer has paid the amount of tax due under the Ordinance.

(8) Hearing of Appeal:

After the receipt of an appeal, the Commissioner (Appeals) shall fix a date for hearing the appeal and sends intimation to:

- (a) Appellant (taxpayer).
- (b) The Commissioner.

The Commissioner (Appeals) can call for any further information and ask the Commissioner to make further inquiry, if needed.

(9) Decision of the Appeal:

The Commissioner (Appeals) may dispose the appeal in following ways:

(i) In case of an order of assessment, he may:

- (a) Cancel the assessment and ask the Commissioner to make fresh assessment.
- (b) Confirm the assessment.
- (c) Reduce the assessment.
- (d) Enhance the assessment.
- (e) Annul the assessment.

(ii) In case of penalty, he may:

- (a) Confirm the penalty.
- (b) Cancel the penalty.
- (c) Increase the penalty.
- (d) Decrease the penalty.

(iii) In case of refund of tax, he may:

- (a) Increase the refund amount of tax.
- (b) Decrease the refund amount of tax.

(iv) In any other case makes such order as he thinks fit.

(10) Time for Decision of Appeal:

The Commissioner (Appeals) shall decide the appeal within 120 days from the filing of appeal. This time limit may be extended by 60 days for reasons to be recorded in writing.

If the appeal is not decided by the Commissioner (Appeals) within the said time limit, all the points raised in appeal by the taxpayer shall be deemed to have been decided in his favour.

Notes: (a) A period during which the hearing of an appeal is adjourned at the request of the taxpayer or is postponed due to any reason shall be excluded for the purpose of this time limit.

(b) Commissioner (Appeals) has power to grant stay of tax demand for a period up to 30 days in aggregate after providing an opportunity of being heard to the Commissioner against whose order appeal has been made.

(11) Communication of Decision:

The Commissioner (Appeals), as soon as practicable, after deciding an appeal shall communicate the orders to:

- (i) The appellant (taxpayer).
- (ii) The Commissioner.

APPEAL TO THE APPELLATE TRIBUNAL [SECTION 131 & 132]

The features of filing an appeal to the Appellate Tribunal are as under:

(1) Against the Decision of Commissioner (Appeals):

In the Appellate Tribunal, an appeal is made against the order or decision of the Commissioner (Appeals). It is the second court of appeal and considered as highest judicial authority in the matters of tax.

(2) Right of Appeal:

The right of appeal against the order of the Commissioner (Appeal) is available to both the taxpayer or the tax department.

(3) Time for Filing an Appeal:

The appeal can be filed by the taxpayer or the Income Tax Department within 60 days from the date of communication of the order passed by the Commissioner (Appeals).

(4) Delay in Filing the Appeal:

The Appellate Tribunal is authorized to extend the period if there is a genuine reason for delay.

(5) Documents to be Submitted:

- (a) Prescribed form of appeal.
- (b) Grounds of appeal (i.e., brief summary of objections).
- (c) Copy of order.
- (d) Power of attorney in favour of authorized representative.
- (e) Challan for appeal fee.

(6) Application Fee:

The prescribed fee shall be Rs. 2000 in all cases.

(7) No Fee by the Department:

No fee shall be payable if the appeal is filed by the Income Tax Department or Authority.

(8) Payment of Tax:

A taxpayer is entitled to file an appeal to the Appellate Tribunal if he has paid the tax according to the decision of the Commissioner (Appeals).

(9) Hearing of Appeal:

The Appellate Tribunal provides an opportunity to both the parties of appeal of being heard either in person or through an authorized representative.

(10) Number of Members:

If the amount of tax or penalty is up to Rs. 1,000,000 then the appeal may be heard by single member and in other cases by more members or a bench.

(11) Decision of the Appeal:

The Appellate Tribunal may dispose the appeal in following ways:

- (i) In case of an assessment order, it may confirm, modify or annul the assessment order.
- (ii) It may remand the case to the Commissioner or the Commissioner (Appeals) for making such enquiry or taking such action as the Tribunal may direct.
- (iii) The Appellate Tribunal shall not increase the amount of any assessment or penalty or decrease the amount of any refund unless the taxpayer has been given a reasonable opportunity of showing cause against such increase or decrease.
- (iv) Where the appeal relates to a decision other than in respect of an assessment, the Appellate Tribunal may make an order to affirm, vary or annul the decision, and issue such consequential directions as the case may require.

(12) Time for Decision of Appeal:

The appeal should be decided by the Appellate Tribunal within 6 months of its filing even it is made by the tax department.

(13) Reference to the High Court:

The order of the Appellate Tribunal on point of fact is final and no appeal can be made but if the taxpayer or tax department is not satisfied with the orders on question involving a point of law, it can refer the case to the High Court.

(14) Communication of Decision:

The Appellate Tribunal shall communicate its decision / order to the taxpayer and the Commissioner as soon as practicable.

REFERENCE TO HIGH COURT [SECTION 133]

Following are the main features of the reference to high court:

(1) Against the Order of Appellate Tribunal:

The order of the Appellate Tribunal involving a question or point of law may be referred to the High Court.

(2) Right of Application:

The taxpayer or the Commissioner, if not satisfied with the decision of the Appellate Tribunal on a point of law, may give an application to the High Court.

(3) Time for Giving Application:

The aggrieved person or the Commissioner may give the application within 90 days of the communication of the order of the Appellate Tribunal.

(4) Documents to be Submitted:

- (a) Application in prescribed form.
- (b) Statement of the case stating any question of law.
- (c) Challan for application fee.

(5) Application Fee:

The application given by a person other than the Commissioner shall be accompanied by a fee of Rs. 100.

(6) Hearing of the Application:

The reference application, to decide whether a question of law arises or not, shall be heard by a bench not less than two judges of the High Court. If the bench is satisfied, it may proceed to hear the case.

(7) Payment of Tax:

If the application is given by a taxpayer, he is required to pay the amount of tax according to the order of the Appellate Tribunal. However, the High Court may give the stay of tax demand for the period of six months.

(8) Effect of Judgment:

If the amount of tax is reduced as a result of the judgment in the reference by the High Court and the amount of tax found refundable, the High Court may, on application by the Commissioner within thirty days of the receipt of the judgment of the High Court that he wants to prefer petition for leave to appeal to the Supreme Court, make an order authorizing the Commissioner to postpone the refund until the disposal of the appeal by the Supreme Court.

APPEAL TO SUPREME COURT

The Income Tax Ordinance does not provide any provision regarding an appeal to the Supreme Court against the orders of the High Court. However an appeal to the Supreme Court can be filed only through Article 185(3) of Constitution if the Supreme Court grants leave to appeal. The cost of the appeal shall be borne by the parties as decided by the Supreme Court and the decision of the Court is final and conclusive in all the cases. The order or decision of the Supreme Court shall be communicated to the Appellate Tribunal for its implementation.

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE (ADRC)

Introduction:

ADR is a legal forum where an aggrieved person, in connection with any matter pending before an Appellate Authority, may apply to the Board for the appointment of a committee for the resolution of any hardship or dispute mentioned in detail in the application except where prosecution proceedings have been initiated or where interpretation of question of law having effect on other identical cases.

Formation of Committee:

The Board after examination of the application of an aggrieved person shall, within sixty days of receipt of such application in the Board, appoint a committee consisting of:

- An officer of income tax department not below the rank of Commissioner.
- FCA or ACMA or an advocate of High Court or an Income Tax Practitioner.
- A reputable taxpayer.

Functioning of the Committee:

The Committee shall examine the issue and may, if necessary, conduct inquiry, seek expert opinion, direct any officer of the Income Tax or any other person to conduct an audit and shall make recommendations within ninety days of its constitution in respect of the resolution of the dispute. If the committee fails to make recommendations within the said period the Board shall dissolve the committee and constitute a new committee which shall decide the matter within a further period of ninety days. If after the expiry of that period the dispute is not resolved the matter shall be taken up by the appropriate forum for decision.

Order Passed by the Board:

The Board may, on the recommendation of the committee, pass such order, as it may deem appropriate, within forty five days of the receipt of recommendations of the Committee.

Effect of the Order of the Board:

An order passed by the Board in the light of recommendations of the committee shall be submitted before that authority, tribunal or the court where the matter is *sub-judice* for consideration and orders as deemed appropriate.

If the taxpayer is not satisfied with the said order, he may continue to pursue his remedy before the relevant authority, tribunal or court as if no such order had been made by the Board.