

APPELLATE TRIBUNAL INLAND REVENUE PESHAWAR
BENCH PESHAWAR
(Special Single Bench)

ITA No.169/PB/2025
MA (Condonation) No.75/PB/2025
(Tax Year-2019)

Anwar Hussain, Kehkashan
Street Number 11, Sabzazar
Colony, Bosan Town, Multan.
Reg#3310429641557.

...Appellant.

Versus

The Commissioner-IR,
Peshawar Zone, RTO,
Peshawar.

...Respondent.

Appellant represented by : Mr. Shams-ul-Islam, Advocate.
Respondent represented by : Mr. Muhammad Ashraf, DR.

Date of Hearing : 19.01.2026.
Date of Order : 19.01.2026.



TRUE COPY

ORDER

DANISH ALI QAZI, MEMBER:- This titled appeal as well as miscellaneous application for condonation of delay have been filed by the appellant taxpayer against the appellate Order No.237, dated 24.12.2024 passed by Learned Commissioner Inland Revenue (Appeals), Peshawar, whereby appeal of the appellant taxpayer relating to tax year 2019 was rejected.

2. Facts leading to this appeal are that appellant taxpayer, an individual and a retired personnel of Pakistan Air Force, filed his return of income for tax year 2019, declaring salary income of Rs.210,000/-, which constituted a deemed assessment under section 120 of the Income Tax

Ordinance, 2001 ("the Ordinance"). Subsequently, on the basis of definite information regarding investments in purchase of immovable properties valuing at Rs.4,517,000/-, notice dated 01.03.2021 under section 122(9) read with section 122(5)(i) was issued, besides a separate notice under section 111(1)(b) is also stated to have been issued by the department calling upon the appellant to explain the source of such investment. Thereafter, the deemed assessment was amended vide ex parte order dated 12.04.2022, passed u/s 122(1) of the Ordinance by making an addition of Rs.4,517,000/- under section 111(1)(b), resulting in assessed income of Rs.4,727,000/- and creation of tax demand of Rs.531,750/-. The appellant challenged the said amended assessment before the Learned CIR(A), Peshawar; however, the appeal was dismissed primarily on the ground of non-appearance and alleged non-compliance with call notices. Aggrieved, the appellant has filed the present appeal before this forum along with an application for condonation of delay to contest the findings of learned CIR(Appeals), on the following grounds:-

Grounds of Appeal.

1. *That the order passed u/s 129(1) of Income Tax Ordinance 2001, is bad in law and against the facts.*
2. *That the impugned order was passed without providing opportunity of being heard by the ACIT/DCIT unit 01, range I Peshawar Zone and later on it was confirmed by the commissioner the commissioner appeals inland revenue RTO Peshawar also without providing opportunity of being heard to the appellant.*
3. *That the order passed u/s 122(1) of Income Tax Ordinance 2001 was bared by time. The notice u/s 122(9) was issued on 1.03.2021 and assessment was finalized on 12.04.2022 which is 406 days late while it was*



TRUE COPY

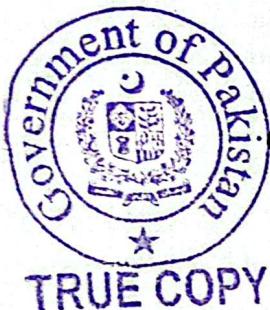
mandatory to the assessing officer to pass an order within 180 days. The commissioner inland revenue did not give due consideration of this provision of law.

4. That the order passed u/s 122(1) of Income Tax Ordinance 2001 by the assessing officer was without any notice served upon the tax payer and the same treatment was meted out by the commissioner inland revenue appeals RTO Peshawar.
5. That while passing the impugned amended order, the assessing officer ignored the instructions of the Board as well as later on the commissioner inland revenue appeals RTO Peshawar issued call notices to the appellant on 05.12.2024, 10.12.2024 and 18.12.2024 for a very short time and confirmed the order of the assessing officer which is totally unjustified.
6. That assessing officer was not justified in making Addition of purchase of property at Rs.4,517,000/- u/s. 111 of the ITO-2001. Despite the fact that no separate notice u/s. 111 indispensable under law was ever issued or served upon the appellant.
7. That the impugned assessment order is illegal and is liable to be set aside/vacated/annulled inter alia.
8. That the appellant hereby requests for your kind permission to add, amend, alter or delete the above grounds of appeal during the course of hearing.
9. That any other relief admissible under law may also be vouch-guarded. The taxpayer may be allowed to raise any additional ground later on at any stage of appeal.

Grounds of MA(Condonation).

The appellant is permanent resident of Sabzazar Colony, Bosan Town Multan province of Punjab and has no concern with Peshawar, province of Khebar Pakhton Khan.

The appellant is a retired employee of Pakistan army and declared salary/pension in his return for the year under consideration at Rs.210,000/200,000/- respectively. The Assistant Commissioner unit 01, rang I, Zone Peshawar, RTO Peshawar made addition u/s 111 of the income tax ordinance 2001 out of purchase of property at Rs.4,517,000/- and created tax demand at Rs.531,750/. Without service of any notice u/s 122(9) are any other call upon the appellant. The assessment frame is totally unjustified and no opportunity of being heard was provided.



TRUE COPY

It is prime important to mention over here that the notice u/s 122(9) was issued on 01.03.2021 while assessment was finalized by the ACIT on 12.04.2022 after 406 days. The assessment framed is barred by time, the same order was confirmed by the commissioner inland revenue appeals RTO Peshawar without giving opportunity of being heard. The tax payer confirmed on oath that no such a notice was ever served by the assistant commissioner Inland Revenue unit 01, range I, zone Peshawar as well as any call notice issued/served by the commissioner inland revenue (appeals) RTO Peshawar.



TRUE COPY

Keeping in view the above forgoing facts and circumstances of the case it is therefore, requested that the condonation in time for filing of return may kindly be accepted and appellant may kindly be allowed to file appeal before your honor that as the same in many cases order has been passed by honorable tribunal that intimation of passing order must be cleared communicated.

3. The appeal as well as MA (Condonation) were fixed for hearing on 19.01.2026. On due date, Mr. Shams-ul-Islam, Advocate/AR represented the appellant/taxpayer, reiterating the grounds of appeal, while Mr. Muhammad Ashraf, Learned DR, appeared for the respondent/department, opposing the AR's contentions. The Learned DR argued that the CIR(A)'s order was lawful and free from error, requesting the bench to uphold it.

4. At the outset, the Learned AR for the appellant pressed the Miscellaneous Application for condonation of delay. It was contended that the appellant is a permanent resident of Multan, Province of Punjab, a retired employee of Pakistan Air Force, and had no effective knowledge of the proceedings conducted at Peshawar. It was further argued that no notices under sections 122(9), 111, or call notices issued by the Learned CIR(A) were ever properly served upon the appellant. The delay, it was submitted, was neither willful nor deliberate and deserves to be

condoned in the interest of substantial justice. On merits, the Learned AR argued that both the assessment order and the appellate order are non-speaking, stereotype, and devoid of application of judicial mind. It was contended that the amended assessment under section 122(1) was barred by limitation, as the show cause notice under section 122(9) was issued on 01.03.2021 whereas the amended order was passed on 12.04.2022, well beyond the statutory period of 180-days. Reliance was placed on the judgment of the Islamabad High Court in ITR No.61 of 2024 (Saqib Hayat Khan v. ACIR), wherein it was held that recovery pursuant to an order barred by limitation amounts to unjust enrichment of the State. It was further argued that proceedings under section 111 are mandatory and must precede amendment under section 122, as settled by the Hon'ble Supreme Court in 2024 SCMR 700 (Commissioner Inland Revenue Lahore v. M/s Millat Tractors Limited), followed in 2024 SCMR 858 and 2024 SCMR 684. According to the Learned AR, no valid or separate proceedings under section 111 were ever initiated or concluded in accordance with law. The Learned AR also submitted factual explanations regarding the source of investment, stating that the appellant had sold one kanal of land for Rs.3,400,000/- and also possessed pension savings amounting to Rs.636,882/- along with available cash, which sufficiently explained the investment under probe.

5. The Learned Departmental Representative (DR), on the other hand, initially opposed both the application for condonation of delay as well as appeal, however, after advancing arguments at some length, admitted that proper opportunity of being heard was not provided to the



TRUE COPY

taxpayer both during assessment proceedings as well as in proceedings before CIR(A), therefore, proposed that Department would have no objection, if case is being remanded back to assessing officer for decision afresh, after grant of proper opportunity of being heard. Learned AR also stated that best way forward in the instant case would be remand of the matter to the assessing officer for *de novo* consideration.

6. I have perused the relevant record available on file as well as the impugned orders passed by the Assessing Officer and the learned Commissioner Inland Revenue (Appeals). It is observed that during appeal proceedings before learned CIR(A), proper and meaningful opportunity of being heard was not provided to the taxpayer. The record reveals that appeal was fixed for hearing thrice within a period of thirteen days on 05.12.2024, 10.12.2024 and finally on 18.12.2024, therefore, fixation of appeal thrice within a period thirteen days for an individual, residing far away in the city of Multan, was improper, besides, this action of learned CIR(A) is in clear violation of FBR Instructions C.No.7(2)DT-14/94 dated 01.02.1994, wherein the authorities have been specifically directed to afford at least three opportunities of hearing to the taxpayer and to allow a minimum period of fifteen days for furnishing explanation or compliance. It is also not lost on the undersigned that even in the assessment proceedings only single hearing notice was issued on 01.3.2021 for compliance on 10.03.2021, whereafter, case was decided on 12.04.2022. The failure to adhere to the said instructions reflects a denial of reasonable opportunity and has resulted in condemning the taxpayer unheard. Such actions are in



violation of the well-settled principle of *audi alteram partem*, meaning thereby that no one shall be condemned unheard. This principle forms the cornerstone of natural justice and has also been constitutionally guaranteed as a fundamental right under Article 10A of the Constitution of the Islamic Republic of Pakistan, which ensures the right to a fair hearing and due process. Consequently, the proceedings undertaken by the Assessing Officer and CIR(A) suffer from legal infirmity and procedural impropriety.



7. By conducting the proceedings in undue haste and failure to provide proper opportunity of being heard, both assessing Officer and learned CIR(A) has ignored age old dicta of the superior courts i.e. **where the law specifies a particular manner and procedure then it is obligatory for the functionary of the state to adhere to the same and comply with it in all respects and any omission to do so invalidate the proceedings on account of which whole super structure raised on such defective foundation automatically crumbles down**, as has been held in Yousaf Ali v/s Muhammad Aslam Zia(PLD 1958 SC 104), EDO Rawalpindi v/s Muhammad Younas(2007 SCMR 1835), Rehmatullah and Others v/s Saleh Khan(2007 SCMR 729), Muhammad Tariq Khan v/s Khwaja Muhammad Jawad(2007 SCMR 818), M/s Pakistan Industrial Promoter v/s Nawazish Ali Jatri(2003 YLR 1277) and Syed Allah Dost v. Haji Muhammad Alam, Etc. (PLD 1987 Quetta 235), Assistant Collector Customs and others v. Messrs Khyber Electric Lamps and 3 others(2001 SCMR 838), Khyber Tractors (Pvt.) Ltd. Through Manager v. Pakistan through Ministry of Finance, Revenue and

Economic Affairs, Islamabad(PLD 2005 Supreme Court 842), Shahida Bibi and others v. Habib Bank Limited and others(PLD 2016 Supreme Court 995), The Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others(2017 SCMR 1427) and Federation of Pakistan through Secretary Finance, Islamabad and another v. E-Movers (Pvt.) Limited and another(2022 SCMR 1021).

8. Since during the course of hearing before this forum, the learned Authorized Representative for the appellant and the learned Departmental Representative, after addressing their respective submissions, agreed that in order to meet the ends of justice, the matter needs to be remanded to the Assessing Officer for decision afresh. Both parties conceded / agreed that the assessment proceedings suffered from procedural deficiencies, particularly with regard to provision of effective opportunity of hearing, and agreed that the case should be re-decided strictly in accordance with the provisions of the Income Tax Ordinance, 2001, relevant FBR Rules, and applicable instructions, after ensuring proper service of notices and affording adequate opportunity to the appellant to explain his position.

9. Resultantly, the Miscellaneous Application for condonation of delay is allowed, as sufficient cause has been shown, thus, impugned order dated 24.12.2024 passed by the Learned Commissioner Inland Revenue (Appeals), Peshawar, is set aside and in view of the unanimous consent of both parties as well as on merit, main appeal is remanded back to the assessing officer for *de-novo* proceedings, who shall issue proper and lawful notices to both appellant and his AR, provide reasonable



TRUE COPY

opportunity of being heard to the appellant in compliance of FBR
Instructions vide C.No.7(2)DT-14/94 dated 01.02.1994, examine
taxpayer's objection on all legal and factual aspects, and thereafter pass
a reasoned and speaking order strictly in accordance with law, within a
period of 150 days.

10. This order consists of eight (08) pages and each page bears my
signature.

 (DANISH ALI QAZI)
MEMBER

Momin Khan

Appeal No: TA NO : 169/PB/2025

Date of Order: 19-01-2026

TRUE COPY ORDER FORWARDED TO

1. Appellant: Anwar Hussain, kalkashay, Multan.

2. Respondent: _____

3. Copy to: _____


ASSISTANT REGISTRAR
APPELLATE TRIBUNAL INLAND
PESHAWAR