RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: MR. JUSTICE **MUHAMMAD EJAZ SWATI.**

SUBJECT: INCOME TAX ORDINANCE, 2001. (SECTION 111)

DATE: 15. 03. 2025

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1. Whether the issuance of a notice under the Income Tax Ordinance require the tax department to ensure its completion in accordance with procedural requirements?

Yes, the issuance of a notice under the Income Tax Ordinance, 2021 must strictly comply with procedural requirements; failure to do so can render the proceedings legally defective.

For Reference:

The Supreme Court judgment in Commissioner Inland Revenue Lahore vs. M/s Millat Tractors Limited (2024), [1]**authored by Justice Mansoor Ali Shah, along with Justices Amin-ud-Din Khan and Jamal Khan Mandokhail**, provides a crucial interpretation of procedural compliance under the Income Tax Ordinance, 2001. The Court ruled that proceedings under Section 111, which deals with unexplained income or assets, must be concluded first before initiating action under Section 122 (which pertains to the amendment of assessment). This sequencing is essential because Section 114(6A) of the Ordinance grants the taxpayer a right to voluntarily revise their return and deposit tax before the issuance of a notice under Section 122(9), thereby avoiding penalties under Section 182. If both proceedings were merged or conducted simultaneously, this statutory right would be lost, which the Court deemed inconsistent with legislative intent. The judgment further clarifies that even after the 2021 amendment introducing an Explanation to Section 111, allowing a single notice under Section 122(9) to incorporate grounds from Section 111(1), the procedural hierarchy remains unchanged—i.e., the tax department must first conclude the Section 111 proceedings before invoking Section 122(9). This ensures procedural fairness and prevents arbitrary or premature taxation.

The above explanation of the judgment means the court emphasized that proceedings under Section 111 (unexplained income) must be concluded before initiating action under Section 122 (amendment of assessment). This sequence ensures due process and taxpayer rights. Also, Simultaneous issuance of notices under Sections 111 and 122(9) is procedurally flawed. The law allows the taxpayer an opportunity to revise returns and voluntarily pay tax under Section 114(6A) before a notice under Section 122(9) is issued.

2. Whether the amount claimed under Section 111 of the Income Tax Ordinance, if paid at the appellate forum, constitute proper compliance with the said provision?

(Particularly when the taxpayer fails to justify the source of agricultural income before the competent authority and does not provide justification at the execution stage.)

Yes, payment of the amount under Section 111 at the appellate stage constitutes compliance, even if the taxpayer initially failed to justify the source of agricultural income, but penalties or surcharges may still apply under provincial laws.

For Reference:

The Lahore High Court judgment (2023), [2]**authored by Justices Shahid Jamil Khan and Muhammad Sajid Mehmood Sethi,** addresses the second query regarding whether a taxpayer's payment of the disputed amount at the appellate forum constitutes compliance under Section 111, even if the source of agricultural income was not justified earlier before the tax authorities. The Court ruled that if agricultural income tax is paid during appellate proceedings before the Appellate Tribunal, it nullifies the effect of Section 111, meaning that the assessment under this provision can no longer be sustained. This implies that the matter is no longer a "past and closed transaction" during appellate proceedings, allowing the taxpayer to rectify the non-compliance by making the payment. Additionally, the judgment affirms that penalties and default surcharges for late payment of agricultural tax can only be imposed under the relevant provincial agricultural income tax laws, not under federal tax provisions. This distinction safeguards taxpayers from being penalized under an incorrect legal framework and reinforces the principle that provincial laws exclusively govern agricultural income taxation.

Keynotes from the above judgment:

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[1] 2024 SCMR 700

[2] 2023 PTD 312

- Once the taxpayer pays the due amount during appellate proceedings, it nullifies the chargeability under Section 111.
- The court clarified that a matter under litigation cannot be treated as a past and closed transaction; hence, paying agricultural income tax at the appellate stage remedies the earlier non-compliance.
- However, if the taxpayer fails to justify the income source before the competent authority and at the execution stage, it could still impact enforcement proceedings and invite penalties or surcharges.
- Penalties or default surcharges for late payment of agricultural tax fall under relevant provincial laws, not the federal Income Tax Ordinance.

Research Note: [3]

The research concludes that strict procedural compliance is mandatory when issuing tax notices, requiring Section 111 proceedings to be finalized before invoking Section 122(9) of the Income Tax Ordinance, 2001. Failure to follow this sequence renders the assessment invalid. Additionally, unexplained agricultural income falls under provincial taxation, not federal jurisdiction, as per Article 142 of the Constitution. Even if a taxpayer fails to justify the source of agricultural income, it cannot be taxed under the Income Tax Ordinance, 2001, and any penalties or surcharges must be imposed under provincial laws like the Balochistan Tax on Land and Agricultural Income Ordinance, 2000. The Lahore High Court's 2023 judgment affirms that FBR lacks jurisdiction over agricultural income tax, ensuring that such matters remain within provincial tax enforcement rather than federal reassessment under Section 111.

Furthermore, the Balochistan Assembly recently passed the Balochistan Tax on Land and Agricultural Income Bill (2025), introducing a progressive tax structure for agricultural earnings. The bill confirms that agricultural income up to Rs600,000 is exempt, while higher income brackets are subject to varying tax rates, reaching up to 45% for incomes exceeding Rs5.6 million. This legislative development reinforces the principle that taxation of agricultural income is exclusively a provincial matter, ensuring that the Federal Board of Revenue (FBR) cannot impose federal income tax on unverified agricultural income. Any issues regarding unexplained agricultural earnings must be resolved under Balochistan's tax laws, rather than through federal proceedings under the Income Tax Ordinance, 2001.

Additional Judgement (s) shall be given in hard copy for reference.

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[3] RA. Tayyaba kakar