

# Appeal, Revision, Review and Alternate Dispute Resolution

*Presented by*

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# APPEAL

- The general meaning of the word “appeal” is an application by a party to an appellate court asking it to set aside or revise a decision of subordinate court.
- In Wharton's Law Lexicon, the word “Appeal” is defined as judicial examination of the decision by a higher court of the decision of an inferior court.

# **RIGHT OF APPEAL**

- **The right of appeal is not an inherent right.**
- **It must be given by an express enactment and that is the scheme of all Acts, Civil or Criminal.**
- **The right which is creature of statute is limited to the extent permitted by it. As the right of appeal is not inherent right, it cannot come under the category of fundamental rights.**
- **It is therefore open to the legislature to impose limitation on right of appeal**

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# **NO WITHDRAWAL**

- **It is not open to the appellant who has preferred an appeal to withdraw it.**
- **The appellate authorities are empowered to enhance the tax.**
- **That power is coupled with the duty imposed on the appellate authority to ascertain what the true assessment ought to be and also to enhance the assessment, if the circumstances so require or justify.**

# NO WITHDRAWAL

- This is public duty imposed on the appellate authority in the interest of Revenue and they cannot neglect or decline to perform that duty only because the appellant realising that if he pursues his appeal it may be the worse for him, has sought leave to withdraw it.

# **DISMISSAL ON DEFAULT**

- **The appeal cannot be dismissed in default.**
- **The appellate authority is bound to give a proper decision on question of fact as well as law which can only be done if appeal is disposed off on merits and not dismissed owing to absence of the appellant.**
- **An order dismissing an appeal in default can by no stretch of imagination be considered to be either just or proper or have been passed on appeal.**

# **SERVICE OF NOTICE ON COUNSEL**

- **The lawyer of the appellant has been held as agent of the appellant.**
- **The service of notice on counsel of the appellant is sufficient to make the period of limitation commence to run.**

# **ADMITTED TAX TO BE PAID**

- **The admitted tax is required to be paid by the assessee before filing of the appeal.**
- **This has been made a condition precedent for entertainment of appeal**
- **No appeal shall be entertained by the appellate authority unless he is satisfied that such amount of Tax as the appellant may admit to be due from him has been paid.**



# **WHAT IS MEMORANDUM OF APPEAL**

- **The appeal and Memorandum of appeal are two distinct things.**
- **The appeal is the judicial examination.**
- **The memorandum of appeal contains the grounds of appeal on which the judicial examination is invited.**
- **For purpose of limitation and for purpose of the rules of the Court it is required that a written memorandum of appeal shall be filed.**

# CERTIFIED COPY

- If the memorandum of appeal is not accompanied with certified copy of assessment order appealed against.
- The appellate authority may reject the appeal after giving the opportunity.

# **TIME REQUISITE FOR OBTAINING CERTIFIED COPY**

- **The time requisite for obtaining certified copy of the assessment order shall be excluded while calculating the time limit.**
- **Sub-Section 2 of Section 12 of Limitation Act 1908 says that the time requisite for obtaining a copy of such order shall be excluded.**

# **SIGNATURE AND VERIFICATION**

- **The Memorandum of appeal is required to be signed and verified by the appellant or by his counsel.**
- **That tax, surcharge and additional surcharge admitted by the appellant on memorandum of appeal has been paid.**
- **That the facts set out in the memorandum of appeal are true to the best of knowledge and belief of the appellant.**

# Appeal to Commissioner of (Appeals)

## Section 127 of I.T. Ord 2001:

- Any person dissatisfied with any order passed by a Commissioner may prefer an appeal to the Commissioner (Appeals) against the order.
- No appeal shall be made by a taxpayer against an order of assessment unless the taxpayer has paid his admitted liability.
- An appeal shall be accompanied by the prescribed fee specified in law which is Rs.1000/- in case of Company and Rs.200/- where appellant is not a company.

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# Appeal to Commissioner of (Appeals)

## Section 127 of I.T. Ord 2001:

- An appeal be lodged with the Commissioner (Appeals) within 30 days of service of assessment order.
- The CIT(A) may, upon application in writing by the appellant, admit an appeal after the expiration of the period if he is satisfied that the appellant was prevented by sufficient cause from lodging the appeal within that period.

## Procedure in appeal.

- The CIT(A) may, before the hearing of an appeal allow an appellant to file any new grounds of appeal where the CIT(A) is satisfied that the omission of the ground was not willful or unreasonable.
- The CIT(A) shall not admit any documentary material or evidence which was not produced before the Commissioner unless he is satisfied that the appellant was prevented by sufficient cause from producing such material or evidence before the Commissioner.

## Decision of appeal.

- In disposing of an appeal, the CIT(A) may make an order to confirm, modify or annul the assessment order after examining such evidence.
- The CIT(A) shall not increase the amount of any assessment order or decrease the amount of any refund unless the appellant has been given a reasonable opportunity of showing cause against such increase or decrease.



## Decision of appeal.

- Where the CIT(A) has not made an order on an appeal before the expiration of [four] months from the end of the month in which the appeal was lodged, the relief sought by the appellant in the appeal shall be treated as having been given
- Any period during which the hearing of an appeal is adjourned on the request of the appellant shall be excluded

## Decision of appeal.

- **This provision shall not apply unless a notice by the appellant stating that no order has been made is personally served by the appellant on the CIT(A) not less than thirty days before the expiration of the period of [four] months.**

# Amendments made through Finance Act 2009 [Section 127(1)]

- An amendment has been made that if an order giving effect to any findings or directions to any order is made under Part III, Chapter X and the taxation officer or taxpayer is not satisfied with the order passed. The taxpayer may again contest such order before the CIT(A). It was a lacuna in law which has been removed. This amendment will help the taxpayer to contest the legal issues before the appellate fora, even if no tax liability is involved in the order passed by the Taxation officer.

# Amendments made through Finance Act 2009 [Section 129(4)]

- A new proviso has been added by virtue of which the Commissioner (Appeals) is now required to pass an order not later than 120 days from the date of filing of appeal or within an extended period of 60 days of reasons to be recorded in writing by him. The period during which the hearing of an appeal is adjourned at the request of the appellant or is postponed due to any appeal or proceedings or stay order, remand or alternative dispute resolution proceedings or for any other reason, shall be excluded in the computation of the aforementioned period.

# CASE LAW

## 2002 PTD 2192 (TRIB.)

- **Non-payment of appeal fee, dismissal of appeal w/o pointing out the deficiency. Tribunal vacated the order of CIT(A) and remand the case for re-adjudication on merits on payment of appeal fee.**

## **2003 PTD 1784 (TRIB.)**

- **Appeal not accompanied by prescribed fee, which was also not paid on request of CIT(A) office. Appeal fee deposited subsequently. High Court accepted appeal of the appellant, resultantly appeal filed by the assessee was deemed to be pending before appellate authority for its decision on merits.**

## **2008 PTD 154 (TRIB.)**

- **Condonation of delay, service of notice, delay in filling appeal was condoned by CIT(A). That service on appellant was not proper, Departmental appeal was dismissed.**

## **1998 PTD 1587 (TRIB.)**

- **Condonation of delay, delay in filing of appeal cannot be condoned on compassionate ground. Commissioner condoning delay of about six years, held apparently gone very much out of his way in condoning most inordinate delay of about six years. Appellant was supposed to explain the delay for each and every day, Department appeal was accepted.**



## **1995 PTD 1053 (TRIB.)**

- **Filing of appeal, handing over of appeal to postal authorities is not filing of appeal. No official or private agency can be treated as an agent of CIT(A) unless specifically so designated or authorised.**

## **1992 PTD 963 (TRIB.)**

- **Appeal cannot be dismissed in default without going into merits of the case either by First Appellate Authority or by Tribunal.**

## 2001 PTD 999 (HC KCY)

- **Appeal to Appellate Tribunal, procedure new and fresh evidence. Material was not permissible to be brought on record by the Appellate Tribunal at the stage of 2<sup>nd</sup> appeal.**

## **2008 PTD 85 (TRIB.)**

- **Service of order on the authorised representative of the assessee. Legality. Section 132(4) of I.T Ord. 79 provides that CIT(A) shall communicate order to the appellant and to the Commissioner. Since the word “Representative” has not been provided under the Section, therefore the service of order was not proper. Application for condonation of delay was allowed.**

## **2006 PTD 590 (HC KCY)**

- **Appeal to Tribunal, new plea, admissibility, appeal being continuation of proceedings initiated at trial stage if a ground was raised at appellate stage. Same could amount to open a new type of investigation with the utter surprise to the other party, and that was not warranted under the law.**

## **2007 PTD 2528 (TRIB.)**

- **Condonation of delay, service of notice on proper person. No limitation runs against a void order. Prayer for condonation by an assessee in revenue matter should be considered sympathetically. appellant was prevented by sufficient cause for presenting appeal within due time. First appellate authority has rightly condoned the delay in filling appeal.**

## **1987 PTD 534 (TRIB.)**

- **Appellant out of country, counsel representing, appellant right from the stage of the assessing officer, verification of memo of appeal by such counsel, validity, signing of memo of appeal and verification by the counsel for the appellant on his behalf held was legal being in conformity with law.**

# Appeal to the Appellate Tribunal

[Section 131 of the I.T. Ord. 2001]

- Where the [taxpayer] or Commissioner objects to an order passed by the Commissioner (Appeals), the [taxpayer] or Commissioner may appeal to the Appellate Tribunal against such order.
- An appeal before the Appellate Tribunal shall be filed on the prescribed form;
- Verified in the prescribed manner;

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# Appeal to the Appellate Tribunal

[Section 131 of the I.T. Ord. 2001]

- Accompanied by the prescribed fee which is Rs.2000/- in case of company and Rs.500/- in other cases;
- Preferred to the Appellate Tribunal within sixty days of the date of service of order of the CIT(A).

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# Appeal to the Appellate Tribunal

[Section 131 of the I.T. Ord. 2001]

- The Appellate Tribunal may, upon application in writing, admit an appeal after the expiration of the period if it is satisfied that the person appealing was prevented by sufficient cause from filing the appeal.
- Tax shall, unless recovery thereof has been stayed by the Appellate Tribunal, be payable in accordance with the assessment made in the case even after filling the appeal.

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# Appeal to the Appellate Tribunal

[Section 131 of the I.T. Ord. 2001]

- **Appellate Tribunal shall not make an order which has the effect of staying the recovery of tax beyond the period of six months in aggregate**

## Disposal of appeals by the Appellate Tribunal.

- The Appellate Tribunal shall afford an opportunity of being heard to the parties
- In case of default by any of the party on the date of hearing, the Tribunal may, if it deems fit, dismiss the appeal in default
- The Appellate Tribunal shall decide the appeal within six months.

# Disposal of appeals by the Appellate Tribunal.

- Where the appeal relates to an assessment order, the Appellate Tribunal may, make an order
- affirm, modify or annul the assessment order; or
- Remand the case to the Commissioner or the CIT(A) for making such enquiry or taking such action as the Tribunal may direct.

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## Disposal of appeals by the Appellate Tribunal.

- **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 hearing because against such increase or decrease.**
- **The Appellate Tribunal shall communicate its order to the taxpayer and the Commissioner.**
- **The Appellate Tribunal shall decide the appeal within six months of its filing.**

# Amendments made through Finance Act 2009

- A new proviso has been inserted in section 131 providing that the Appellate Tribunal may stay the recovery of tax on filing appeal which order will remain operative for 30 days during which period a notice shall be issued to the respondent and after hearing the parties order may be conformed or altered as the Tribunal deems fit. However, stay order shall in no case remain operative for more than 180 days.

## Reference to High Court

- Within ninety days of the communication of the order of the Appellate Tribunal, the aggrieved person or the Commissioner may refer an application, in the prescribed form along with a statement of the case, to the High Court, stating any question of law arising out of such order.
- The statement of the case shall set out the facts, the determination of the Appellate Tribunal and the question of law which arises out of that order.



## Reference to High Court

- Where, on an application made, the High Court is satisfied that a question of law arises out of the order it may proceed to hear the case.
- A reference to the High Court under this section shall be heard by a Bench of not less than two judges of the High Court.
- The High Court upon hearing a reference under this section shall decide the question of law raised.

## Reference to High Court

- Pass judgment thereon specifying the grounds on which such judgment is based and the Tribunal's order shall stand modified accordingly.
- The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal.
- Where recovery of tax has been stayed by the High Court by an order, such order shall cease to have effect on the expiration of a period of six months.

# Reference to High Court

- **Section 5 of the Limitation Act, 1908 shall apply to an application made to the High Court.**
- **An application by a person shall be accompanied by a fee of one hundred rupees.**

# CASE LAW

## 2008 PTD 1087 (HC)

- **Section 136(1). Jurisdiction of the High Court is advisory in nature and in exercise of its advisory jurisdiction, High Court can only give opinion on the question of law arising from the order of the Tribunal.**

## **2007 PTD 1577 (HC)**

- **Section 136(2), Reference to High Court, Question raised in reference based on finding of facts rendered by the Tribunal, Validity, High Court in its advisory jurisdiction could not adjudicate such question.**
- **Questions proposed before Tribunal changed before High Court, such change would render reference application before High Court non-maintainable.**

# Appeal to Supreme Court

- **Appeal to Supreme Court from the order of High Court has not been provided in the Income Tax Ord. 2001.**
- **In ordinary course there cannot be appeal without statutory provisions of the Act.**
- **The appeal to Supreme Court can be made under Article 185 of the Constitution of Pakistan.**

# Appeal to Supreme Court

- The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by a high
- Only exception provided under this Article is order or sentence passed under any law relating to the armed forces.

# Appeal to Supreme Court

- If the case involves a substantial question of law as to the interpretation of the Constitution, appeal will lie to the Supreme Court from an order of High Court on grant of certificate from the High Court.
- If the certificate of fitness is refused by the High Court, the Supreme Court may grant special leave to appeal. An appeal shall lie only if the Supreme Court grants leave to appeal.



# Grant of Leave, General Principles

- Though there are no Constitutional restraints on the exercise of discretionary power by Supreme Court, it has imposed certain limitations upon its powers.
- The power is to be exercised sparingly and in exceptional cases where special circumstances are shown to exist.
- The Court will be loath to interfere unless by disregard to the forms of legal process or some violation of the principles of natural justice or otherwise substantial and grave injustice has been done.

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# Grant of Leave, General Principles

- Special leave to appeal, however, would not, as a rule, be granted where the question involved in appeal had become academic.
- Since power to grant special leave is discretionary, the Court may refuse leave where the conduct of the petitioner has not been above the board or he has come with unclean hands or had suppressed material facts from the Court.

# Appeal in Supreme Court does not affect the validity of High Court decision.

- The mere fact that the decision of High Court is under appeal does not make it less binding on Courts, Tribunals and other authorities within the state until it (that decision) is reversed by the Supreme Court.

# CASE LAW

## 2000 SCMR 1871

- Where appeal before Supreme Court was admitted by leave of the Supreme Court. Certificate of fitness by High Court u/s 137(1) for filing appeal before Supreme Court was not necessary.

# REVISION

- The essence of revisional jurisdiction lies in the duty of the superior officer entrusted with such jurisdiction to see that officers keep themselves within the bounds prescribed by law.
- That they do what their duty required them to do.
- They do it in a legal manner.
- This jurisdiction being one of superintendence and correction in appropriate cases.

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# REVISION

- It is exercisable even suomotu.
- In the case of revision at the invitation of the party the Commissioner would have jurisdiction to interfere only with that part of order in respect of which the party is inviting the Commissioner to exercise his revisional jurisdiction.

# Revision by Commissioner

(Section 122-A of the Ord. 2001)

- **The Commissioner may [suo moto] call for the record of any proceeding under this Ordinance in which an order has been passed by any taxation officer.**
- **After making such inquiry as is necessary, Commissioner considers that the order requires revision, the Commissioner may make such revision to the order as deems fit.**

# **Revision by Commissioner**

**(Section 122-A of the Ord. 2001)**

- **The Commissioner shall not revise any order if an appeal against the order lies to the CIT(A) or to the Appellate Tribunal, the time within which such appeal may be made has not expired.**
- **The order is pending in appeal before the CIT(A) or has been made the subject of an appeal to the Appellate Tribunal.**



# **Revision by the Regional Commissioner**

## **(Section 122-B of the Ord. 2001)**

- **The Regional Commissioner may, either of his own motion or on an application made by the taxpayer for revision.**
- **Call for the record of any proceedings relating to issuance of an exemption or lower rate certificate with regard to collection or deduction of tax at source, in which an order has been passed by any authority.**

# **Revision by the Regional Commissioner**

**(Section 122-B of the Ord. 2001)**

- **Where, after making such inquiry as is necessary, Regional Commissioner considers that the order requires revision.**
- **The Regional Commissioner may, after providing reasonable opportunity or being heard to the taxpayer, make such order as he may deems fit in the circumstances of the case.**

# REVIEW

- Review mean an alteration, which changes the sense whether wholly or partially.
- Generally review has not been provided under the enactments except under the exceptional circumstances.
- The exceptional circumstances are that if there is a mistake of law or fact apparent from the record/order.
- Only the Supreme Court has inherent power to review its order. Article 188 of the Constitution empowers the Supreme Court to review its order.

# **REVIEW UNDER THE INCOME TAX ORDINANCE 2001.**

- **The power of review in the form of rectification have been given through Section 221 of the Income Tax Ordinance 2001.**
- **Tax authorities can review / rectify their order if there is mistake apparent from record.**
- **Mistake of fact as well as mistake of law can be rectified u/s 221 of the Ord. 2001.**

# REVIEW

## ■ MISTAKE OF LAW

- The question when there is difference of opinion on the basis of decisions of Supreme Court in two different cases is whether it can be said a case of an error on the face of record. The Supreme Court of India held that the Sales Tax authorities were undoubtedly entitled to rectify their earlier order.

## ■ MISTAKE OF LAW

- When a statutory provision is interpreted as to its precise ambit and effect, it will have effect right from the inception of the statutory provision. Where, therefore, ex-facie the record or order an error is evident with reference to such declaration of ambit and effect of the statutory provision it may well fall within purview of Review.

## ■ **MISTAKE OF LAW**

- But where the law as declared will in its application depend on facts and those facts will have to be presented by the assessee, then the error will be on the part of the assessee, if he has not placed them before the authorities at the time the assessment order was made. In this case the appeal of state was allowed by the Madras High Court.

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# Review by Supreme Court

(Article 188 of Constitution)

- The Supreme Court has jurisdiction, (subject to the provision of any Act of Parliament and the Rules, if any, made by the Court itself), to review any judgment or order.
- At present there is neither any act of Parliament nor any rules, subject to which the Court may exercise its powers of review, therefore, its jurisdiction to review remains unfettered.



# GROUND OF REVIEW

- Subject to the law and the practice of the Court, the Supreme Court may review its judgment or order in a civil proceeding on grounds similar to those mentioned in Order XLVII, rule 1 of the Code.
- In a criminal proceeding on the ground of an error apparent on the face of the record.
- Review which attempted to alter the very foundation of the judgment could not be allowed.

# Review by Supreme Court

- The rule in Part IV, Order XXVI of the Supreme Court Rules 1956, merely prescribes a period and form for an application for review and does not state the grounds on which review may be granted.
- The questions raised in an application for review must be questions of substance and a ground which merely traverses an earlier finding is not a proper ground for review.

# Inherent Power of Court

- The power of the Supreme Court on question of review is not circumscribed by the Rules as it has inherent powers under Order XXXIII of the Supreme Court Rules, 1980 to make orders as may be necessary for the ends of justice.
- Similarly Supreme Court in proper cases can invoke Article 187 of the Constitution to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it.

# CASE LAW

## 2006 PTD 584 (TRIB.)

- **Appeal to Appellate Tribunal, where relief has been allowed due to misinterpretation of law it should not debar, restrict or curtail of powers of the Appellate Tribunal from arriving at a proper legal conclusion at any time deviating from the previous order of the officer below.**

## **2007 PTD 308 (SC)**

- **Rectification u/s 156 of I.T. Ord 1979 is permissible if error is apparent, obvious and floating on the surface of judgment and can be rectified without long drawn arguments and proceedings for appreciating facts and interpretation or application of any provision of law.**

## ■ 2007 PTD 181 (TRIB.)

- **Legislature in term of Section 156 of I.T. Ord. 1979 had empowered the Income Tax authority or the Tribunal to rectify any order passed by it either on its own motion or on such mistake being brought to its notice by assessee.**
- **Review of judgment. Appellate Tribunal had no power so as to review its own judgment, but under the provision of 156, the Income Tax Authority or the Tribunal can amend or rectify its order where a mistake of law and fact had taken place.**

# ALTERNATE DISPUTE RESOLUTION

- **Alternate Dispute Resolution (ADR) is a generic term.**
- **It is any mean of resolving dispute between the parties through any mode other than litigation in the court of law.**
- **It is out of court settlement of disputes through compromise.**

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# ALTERNATE DISPUTE RESOLUTION

- There are several recognized ADR procedures. Negotiation is the most common, and involves the parties themselves attempting to resolve the dispute.
- Various forms of resolving disputes outside the court are mediation, conciliation, arbitration, neutral evaluation, Expert Determination.



# DEVELOPMENT OF ADR

- After the advancement of national and international business, the commercial litigations in the court of law involving government agencies has increased throughout the world and as a result the courts of law could not provide justice speedily.
- Because of such increasing burden of cases also delayed justice in other cases as well.

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# DEVELOPMENT OF ADR

- In 70's developed countries thought to find out ways and means to resolve disputes between citizens and government as well as between multinationals and national companies and persons and companies who have disputes to adjudicate the same outside the court.

# **DEVELOPMENT OF ADR**

- **The ADR as a subject of law, has developed so much after 70's that it has become a specialized field for the lawyers in developed countries.**
- **It is now a mean to settle disputes between the litigants outside courts.**
- **Alternate Dispute Resolution is now inserted in every statute dealing with the civil disputes.**
- **Even special act as Alternate Dispute Resolution Act is also promulgated by a number of developed countries.**

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# ADVANTAGES OF ADR

- **Introduction of ADR in various statutes to get the dispute settled outside the court has not only reduced the burden of the court but also saved time and money of the litigants.**
- **It has also controlled the corruption and maladministration in the various Government agencies.**

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# ADVANTAGES OF ADR

- In the court dispute between the parties is adjudicated by a judge or several different judges, who, whilst being independent, may have limited knowledge of the dispute and therefore need advise from expensive counsels.
- In ADR the persons appointed in complex disputes are well versed with the subject and the law involved.

# ADVANTAGES OF ADR

- In litigation there are rules of procedure laid down by the court which both parties have to follow. In ADR there are also rules, but they are very flexible.
- The parties and the neutral persons so appointed to settle the dispute can mutually agree to change them as the process matures.

# ADVANTAGES OF ADR

- In litigation there may be a time table, but it is usually designed to suit the needs of the court and not the parties'.
- In ADR timetables are specified in the agreed rules that the parties have signed up to, and can be made more flexible.

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# ADVANTAGES OF ADR

- In litigation in the court more cases may be listed for the judge and the Judge may not cope with all the cases that day and the cases not heard may be put off to some other day, several weeks or months later.
- In ADR if there is a hearing or meeting of the parties and the neutral, the hearing date is set by the neutral after close liaison with the parties, to ensure that everyone is available and therefore limit the possibility of cancellations.

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## **ADVANTAGES OF ADR**

- **In litigation there is discretion on costs.**
- **In ADR the issue of costs is dealt with as a preliminary matter and the parties know in advance the likely range of costs and who will be liable to pay.**
- **ADR allows the parties an opportunity to have a dispute resolved quickly, cost-effectively and privately rather than suffering from an imbalance in representation leading to an expensive and public mauling in the courts.**

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# ADVANTAGES OF ADR

- For the businessmen and professionals, ADR reduces litigation costs and saves valuable management time.
- Under ADR parties can avoid the expense, delay, stress and divergence of time in bringing case to court.

# ADR IN PAKISTAN

- Resolution of disputes outside the court is not a new concept in Pakistan. Arbitration, mediation, resolution of disputes through *Punchayat, Jirga*, through interference of elders, arbitration, mediation, reconciliation etc. are the ways to resolve disputes between parties are existing in Pakistan since long.

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# ADR IN PAKISTAN

- Reasonable commercial disputes are resolved through Arbitration in Pakistan.
- The disputes between the Government agencies and the citizens in Pakistan are increasing in geometrical progression in the courts of law.

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# **ADR IN PAKISTAN**

- **The increase in litigation by or against the Government is not only time consuming but the delay of such disputes cause loss to both the Government and citizens.**
- **Such disputes between the State agencies and citizens are one of the causes that justice is delayed in Pakistan and the people are loosing faith in the courts of law.**

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# ADR IN PAKISTAN

- Overgrowing disputes between the Government agencies and the citizens had on the one hand burdened more work on the Courts of law and on the other hand such disputes benefit neither the Government nor the citizens.
- Such disputes are also hurdle in the growth of economy of the country.

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# ADR IN PAKISTAN

- **The Law and Justice Commission of Pakistan recommended ADR for implementation of alternate mode of dispute resolutions.**
- **The Government of Pakistan in the year 2002 amended Civil Procedure Code, 1908. Section 89 gives powers to the civil courts to adopt, subject to the consent of the parties, to settle dispute by ADR.**

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# ADR IN PAKISTAN

- **Amendment in Central Excise, Customs, Income Tax and Sales Tax laws are made through Finance Act, 2004 whereby provisions regarding Alternate Dispute Resolution is introduced in the tax laws.**



## **RESOLUTION OF DISPUTE BY ADR**

### **UNDER INCOME TAX ORDINANCE, 2001**

- **Section 134-A has been inserted in the Income Tax Ordinance 2001.**
- **Any aggrieved person in connection with any matter of income tax pertaining to liability of income tax, admissibility of refund, waiver or fixation of penalty or fine, relaxation of any time period or procedural and technical condition may apply to the FBR for the appointment of a committee for the resolution of any hardship or dispute mentioned in detail in the application.**

## **RESOLUTION OF DISPUTE BY ADR** **UNDER INCOME TAX ORDINANCE, 2001**

- **The FBR after examination of the application of an aggrieved person shall appoint a committee consisting of an officer of Income Tax and two persons from a notified panel of Chartered or Cost Accountants, Advocates, Income Tax Practitioners or reputable taxpayers for the resolution of the hardship or dispute.**

## **RESOLUTION OF DISPUTE BY ADR** **UNDER INCOME TAX ORDINANCE, 2001**

- **The committee constituted shall examine the issue and may, if it deems necessary.**
- **Conduct inquiry, seek expert opinion, direct any officer of Income Tax or any other person to conduct an audit.**
- **Make recommendations in respect of the resolution of dispute as it may deem fit.**
- **The FBR may, on the recommendation of the committee, pass such order, as it may deem appropriate.**

## **RESOLUTION OF DISPUTE BY ADR** **UNDER INCOME TAX ORDINANCE, 2001**

- **The aggrieved person may make the payment of income tax and other taxes as determined by the FBR in its order**
- **All decisions, orders and judgments made shall stand modified to that extent and all proceedings under this Ordinance or the rules made there-under by any authority shall abate.**

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## **RESOLUTION OF DISPUTE BY ADR** **UNDER INCOME TAX ORDINANCE, 2001**

- **In case the matter is already sub-judice before any authority or tribunal or the court, an agreement made between the aggrieved person and the Board in the light of recommendations of the committee shall be submitted before that authority, tribunal or the court for consideration and orders as deemed appropriate.**

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## **RESOLUTION OF DISPUTE BY ADR** **UNDER INCOME TAX ORDINANCE, 2001**

- **In case the aggrieved person is not satisfied with the orders of the FBR.**
- **The aggrieved person may file an appeal or reference with the appropriate authority, tribunal or court under the relevant provisions of this Ordinance within a period of sixty days of the order passed by the Board under this section has been communicated to the aggrieved person.**

# Amendments made through Finance Act 2009

- Through an amendment in section 134(1) of the Ordinance, following conditions have been inserted which would make the section inapplicable.
- Where prosecution proceedings have been initiated.
- Applications which require interpretation of various question of law having effect on identical other cases.

# Amendments made through Finance Act 2009

- **ADRC shall submit its recommendations within 90 days of its constitution.**
- **The Committee shall be dissolved by the FBR in case it fails to submit its recommendations with the stipulated period.**
- **In such cases the Board shall then constitute another committee and the reconstituted committee will be required to submit its recommendations in 90 days.**



# QUESTIONS AND ANSWERS



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