

Letter to FBR: PTBA rejects serving notices on resident taxpayer, electronically, as invalid, illegal

Pakistan Tax Bar Association (PTBA) has requested the Federal Board of Revenue (FBR) to issue clarification regarding services of notices and other documents on the resident taxpayer. In a letter sent to the Member IR policy, the PTBA stated that the Bar sought board's clarification with regard to proper service of notices and other documents on the resident taxpayer under the Income Tax Ordinance 2001 and Income Tax Rules 2002 read with General Clauses Act, 1897.

The letter cited the case reported as 2014 PTD 1085; wherein it was held that since the notice for compliance was not issued via the registered post or through courier service and there was nothing on the record to prove that the notice was properly served upon the taxpayer, the action of the assessing officer was in violation of section 218 of the Ordinance read with section 27 of the Act, 1897.

It is also held in the cases reported as 2012 PTD (Trib.) 478 and 2015 PTD (Trib) 2042 that since there was no proper service of notices, an ex-parte order passed by the department against the registered person to its detriment was unlawful, illegal and not sustainable in the eyes of the law.

On the plain reading of section 218(1) of the Ordinance, it is very clear and transparent that the valid method of serving a notice should be through registered post or courier service and other than prescribed for service of a summons under the Code of Civil Procedure, 1908. It said that the construction of the language of this section of the Ordinance did not leave any grey area for anyone to interpret it as to encompass any electronic method only be used for communication as valid service of notice.

Moreover, even on the combined reading of above provisions of law and the decisions of the superior courts, the PTBA is of the view that any notice, order, other document or requisition served shall only be considered to be valid on the resident taxpayer (other than in a representative capacity), if it is served in accordance with the mode and manner prescribed under section 218(1) of the Ordinance.

The service of notice and other documents, electronically, has been provided under Rule 74 of the Rules and it is a well-settled principle which states that a subordinate legislation cannot prevail over the act that gives the subordinate the authority to make supplementary laws for helping the interpretation.

Apparently, that Rule could not expand the scope of the Ordinance, therefore allowing electronic medium for communication under the rules is null and void as to its effectiveness and applicability [AIR 1986 SC 737 (Para 15)].

Therefore, PTBA has requested to confirm its above understanding that only notices and other documents served on the resident taxpayer in accordance with

the mode and manner prescribed under section 218(1) of the Ordinance would be valid and legal and any service of notice or other documents made only electronically shall not be considered as valid and in accordance with the provisions of law.

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