

FBR prescribes revised procedure for filing of appeals

The Federal Board of Revenue (FBR) has prescribed a revised procedure for filing of appeals by taxpayers to the Commissioner (Appeals) under which stay applications shall be disposed of by the Commissioner (Appeals) within seven working days of fixation. In this regard, the FBR has issued SRO 162(1)/2018 here on Friday to issue draft of certain further amendments to the Income Tax Rules, 2002.

According to the FBR, an appeal under section 127 of the Income Tax Ordinance shall be in the specified form and verified in the manner indicated therein.

Any official authorized by the Commissioner (Appeals) in this behalf shall endorse on the front page of every memorandum of Appeal the date on which it is presented, sign the endorsement and the appeal so endorsed shall be entered in a register as provided under Rule 76K, the FBR said.

Every memorandum of appeal shall be accompanied with the documents along with checklist specifying the documents attached with the memorandum in duplicate (one of which shall be a certified copy) including the order appealed against; notice of demand; proof of payment of appeal fee; a certificate showing the date of service of notice of demand or the impugned order to the appellant and a certificate showing the date of communication of the memorandum of appeal and grounds of appeal to the respondent department.

The appellant shall annex an index on the face of memorandum of appeal, showing the documents filed under this rule along with paging in paper book form in duplicate.

The appellant shall before filing of appeal send a copy of the memorandum of appeal and grounds of appeal to the respondent and a certificate to this effect shall be appended with the appeal, the FBR said.

Where a fact, which cannot be borne out by or is contrary to the record, is alleged, it shall be stated clearly and concisely by a duly sworn affidavit and shall have to be filed with the memorandum of appeal.

Where a memorandum of appeal is not filed in the manner specified in these rules, the official authorized under rule 76A after examination at the time of filing may, within 3 working days, require the appellant or his authorized representative, if any, to bring the memorandum of appeal in conformity with the form set out herein above in Rule 76B, within the time limitation as specified in sub section (5) of section 127 of the Ordinance subject to just exceptions under subsection (6) of section ibid and the appeal so received shall not be deemed to have been filed unless the provisions of these rules have been fully complied with.

Where the appellant or his authorized representative does not meet the requirement under sub Rule 1, the authorized official shall place the matter before the Commissioner (Appeals) for appropriate orders, the FBR said.

Where an authorized representative has been appointed/declared as defined in section 172 of Income Tax Ordinance, 2001, such representative shall annex with the memorandum, the document showing his authority and his acceptance thereof, which shall be signed and dated by the representative and shall also specify his capacity in which he is acting as such, the FBR maintained.

On receipt of stay application the official authorized in this behalf shall fix the application for hearing in the following manner:

For applications received before 01:00pm on a working day, hearing shall be fixed on the next working day and for applications received after 01:00pm on a working day, hearing shall be fixed on the day after the next working day.

Stay applications shall be disposed of by the Commissioner (Appeals) within seven working days of fixation, the FBR added.

The Commissioner (Appeals) shall issue and properly serve notices to both the parties to the appeal informing them about the date and place of hearing of appeal or the stay application as the case may be.

The Commissioner (Appeals) may, where deemed necessary, require the respondent department to submit para-wise comments in response to the appellant's written submissions, if any, on or before the due date of hearing.

On the day fixed for hearing or any other day to which the hearing is adjourned, the appellant shall be heard and the Commissioner (Appeals) shall then hear the respondent against the appeal or stay application and in that case the appellant shall have a right to reply.

The Commissioner (Appeals) may from time to time adjourn the hearing of the appeal.

The Commissioner (Appeals) shall issue notices to both parties for providing them a reasonable opportunity to present their stance in case of increase in the amount of any assessment order or decrease in the amount of any refund.

Arrangement and preservation of record: The record of appeals, and other applications shall consist of two parts, namely 'Part-A' and 'Part-B'.

Part-A would cover folder containing the particulars of appeals, applications and brief abstract of the impugned orders of the Commissioner; order sheet or chronological abstract of orders; original copy of memorandum of appeal; original copies of grounds of Appeal; affidavits; judgment or any other final order against which appeal is preferred and judgments and orders of high courts and Supreme Court.

The document specified in sub rule-I shall form "Part-A" of the record unless otherwise directed by the Board, all other documents shall form "Part-B" of the record.

The documents forming part of appeals, and other applications specified in this rule shall be preserved for a period specified, which shall be reckoned from the date of final order. The expression documents used in this rule includes all forms of electronic record.

Documents to be preserved permanently included Part "A" of the appeals, and applications; and judgments of the high court, Supreme Court in constitutional petitions.

Documents to be preserved for twelve years included Part "B" of the appeals record and any other documents as directed by the Board.

Destruction of record, after the prescribed period as provided shall be in the manner as directed by the Board.

After the expiry of the period of preservation specified in rule 76M above, the record of the appeals and other applications shall be destroyed in supervision of Commissioner (Appeals).

All court fee stamps, affixed to documents which are to be destroyed, shall be removed there from and burnt.

The record shall be destroyed by tearing or otherwise so that no document may be used again, the FBR said.

After destruction of the record, the Commissioner (Appeals) under whose supervision the record was destroyed shall certify that the destruction has been rendered such record of no use.

The fact of destruction of appeals and other applications shall be recorded under the signatures of Commissioner (Appeals) immediately after their destruction in the register in which such appeals, applications are entered and also in the index prefixed to the record.

Seal of the Commissioner (Appeals):- There shall be a seal of the Commissioner (Appeals) on which shall be inscribed his name and insignia. The seal shall remain in the custody of the official as the Commissioner (Appeals) may direct and shall be affixed on every order passed by the Commissioner (Appeals).

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