

APPELLATE TRIBUNAL INLAND REVENUE, DIVISION BENCH-I,
ISLAMABAD

ITA No.1792/IB/2024

(Tax year, 2018)

Mr.CM Rafi, Maj Gen(R);

House No.285/1, Raja Akram Road,
Rawalpindi.

Applicant

Vs

The Deputy Commissioner Inland
Revenue, Unit-AEIO, LTO, Islamabad.

Respondent

Appellant By:

Mr. Razaqat Ali Syed, ITP

Respondent BY:

Mr. Khurshid Alam, DR

Date of Hearing:

16.01.2025

Date of Order:

16.01.2025

ORDER

M. M. AKRAM (Judicial Member): The titled appeal was transferred by the learned Commissioner of Inland Revenue (Appeals-I), Islamabad, on September 18, 2024, under Section 126A(4) of the Income Tax Ordinance, 2001 ("**the Ordinance**"), as the assessed tax value in this case exceeds twenty million rupees. Consequently, this Tribunal is now tasked with deciding the appeal. The appellant contests the Impugned Order dated February 29, 2024, issued by the Assistant Commissioner of Inland Revenue, Unit-AEIO-2, Range-AEOI, LTO, Islamabad for the tax year 2018, based on the grounds detailed in the memo of appeal.

2. The brief facts of the case are that the appellant taxpayer, an individual, earns income from salary and business. For the relevant tax year, the taxpayer electronically filed their return on 25.11.2018, declaring the following: income from salary at Rs. 4,271,760/- income from business at Rs. 375,080/- pension income at Rs. 1,748,472/- profit on debts at Rs. 1,985,983/- and agricultural income at Rs. 80,000/-. The wealth statement as of 30.06.2018 declared total assets amounting to Rs. 117,954,562. The assessment was deemed finalized under Section 120(1) of the Ordinance as per the return. The taxpayer later

revised their wealth statement on 10.07.2019, maintaining the total assets at Rs. 117,954,562 but adding accumulated US Dollars in various accounts, including TDRs amounting to Rs. 1,291,854/- and an offshore bank account with a zero balance. Subsequently, on 09.03.2023, the taxpayer revised their wealth statement again, keeping the declared total assets unchanged but adding agricultural land measuring 52 kanal and 17 marlas with the same value.

3. The taxpayer's case was selected by the Commissioner IR for audit under Section 177 of the Ordinance for the relevant tax year. The reasons for selection were communicated to the taxpayer by the then Commissioner Inland Revenue (CIR), Cantt Zone, RTO Rawalpindi, through an intimation letter dated 17.12.2019. An Initial Document Request was issued under Section 177(1) of the Ordinance on the same date, requiring submission of supporting documents, details, and explanations. In response, the taxpayer submitted a written reply dated 11.11.2023, along with supporting documents, including tax deduction certificates issued by Soneri Bank Limited, a deposit slip from the National Bank of Pakistan, tax deduction certificates from M/s Hearts International Hospital (Pvt) Limited, and wealth statements of the taxpayer and a related individual, Muhammad Usman Rafi. After reviewing the taxpayer's reply and the submitted documents, the department identified issues requiring further clarification. These issues were communicated to the taxpayer through a notice dated 29.01.2024 under **Sections 177(6) and 177(10)** of the Ordinance to finalize the audit proceedings. The taxpayer requested an adjournment, which was granted. Subsequently, the taxpayer's AR submitted a written reply on 15.02.2024, providing additional documents, including tax deduction certificates and service charge details from M/s Hearts International Hospital (Pvt) Limited, tax deduction certificates from PTCL and Soneri Bank Ltd., handwritten details of medicines and diesel, proof of salary through the income tax return of Ms. Ayesha Usman, and bank statements from Askari Bank Ltd., Soneri Bank Ltd., National Bank of

Pakistan, and Habib Bank Ltd., as well as a token tax payment slip. The taxpayer's response and submitted records were reviewed but found unsatisfactory. Consequently, a show-cause notice was issued on 23.02.2024 under section 122(9) of the Ordinance. In response, the taxpayer submitted a written reply dated 28.02.2024. After reviewing the reply, the assessment proceedings were finalized under Section 122(1), and an order was issued on 29.02.2024. The taxpayer challenged this order on several grounds before the learned Commissioner (Appeals) who transferred the appeal before this Tribunal for decision.

4. The case was heard on January 16, 2025. The learned Authorized Representative (AR) for the appellant contested the order issued by the assessing officer, asserting that it was contrary to the law and the facts of the case. He relied on the arguments already presented in the grounds of appeal. The AR forcefully argued that the impugned order was issued without the preparation of a formal audit report, in violation of the provisions of Section 177(6) of the Ordinance and the principles established by superior courts. He elaborated that an order issued in the absence of a formal audit report cannot be considered valid. In support of this contention, reliance was placed on **2018 PTD 1444**. The AR further submitted that the assessing officer, while issuing the notice under Section 177(6), explicitly acknowledged that no documentary evidence necessary for the issuance of an audit report had been provided. He contended that the mere use of the term "audit report" does not satisfy the requirements of an actual audit report. Consequently, the assessing officer should have issued a notice under Section 121 of the Ordinance and proceeded under the provisions of that section. The AR cited **2022 125 TAX 354** in support of his position. Concluding his arguments on legal grounds, the AR asserted that these procedural and legal deficiencies are incurable and render

the entire proceedings void *ab initio* and without jurisdiction in light of the aforementioned legal precedents.

5. On the merits of the case, the learned AR for the appellant submitted written arguments supported by material evidence and records, which will be examined in detail in the subsequent part of this judgment.

6. On the other hand, the learned Departmental Representative (DR) appearing on behalf of the revenue department defended the order passed by the assessing officer. He argued that the appellant was afforded sufficient opportunities to submit the necessary records in support of their declared version but failed to provide a complete set of records. In the absence of the required documentation, the assessing officer acted appropriately in concluding the audit proceedings and issuing the impugned order. The DR, therefore, requested that the appeal be dismissed.

7. We have carefully considered the arguments presented by the learned representatives of both sides and thoroughly reviewed the available records. After due deliberation, we find that the submissions made by the learned AR hold significant merit. The core legal issue in the present appeal pertains to the interpretation of Section 177 of the Ordinance. Specifically, the question is whether, after the production of records and related documents, the conduct of an audit, issuance of an audit report upon the conclusion of audit proceedings, and seeking explanations from the taxpayer on all issues raised during the audit are prerequisites for the Assessing Officer to assume jurisdiction under Section 122 of the Ordinance. To address this question, it would be advantageous to reproduce hereunder the relevant provisions of law:-

177. Audit:- (1) The Commissioner may call for any record or documents including books of accounts maintained under this Ordinance or any other law for the time being in force for conducting an audit of the income tax affairs of the person and where such record or documents have been kept on electronic data, the person shall allow access to the Commissioner or the officer authorized by the Commissioner for use of machine and software on which such data is kept and the Commissioner or the officer may have access to the required information

and data and duly attested hard copies of such information or data for the purpose of investigation and proceedings under this Ordinance in respect of such person or any other person: -

Provided that--

- (a) the Commissioner may, after recording reasons in writing call for record or documents including books of accounts of the taxpayer; and
- (b) the reasons shall be communicated to the taxpayer while calling record or documents including books of accounts of the taxpayer:

Provided further that the Commissioner shall not call for record or documents of the taxpayer after expiry of six years from the end of the tax year to which they relate.

(2) After obtaining the record of a person under sub-section(1) or where necessary record is not maintained, the Commissioner shall conduct an audit of the income tax affairs (including examination of accounts and records, enquiry into expenditure, assets and liabilities) of that person or any other person and may call for such other information and documents as he may deem appropriate.

(2A) For the purpose of sub-section (2), the Commissioner may conduct audit proceedings electronically through video links, or any other facility as prescribed by the Board.

(2AA) Where a taxpayer— (a) has not furnished record or documents including books of accounts; (b) has furnished incomplete record or books of accounts; or (c) is unable to provide sufficient explanation regarding the defects in records, documents or books of accounts, it shall be construed that taxable income has not been correctly declared and the Commissioner shall determine taxable income on the basis of sectoral benchmark ratios prescribed by the Board. Explanation.—The expression "sectoral benchmark ratios" means standard business sector ratios notified by the Board on the basis of comparative cases and includes financial ratios, production ratios, gross profit ratio, not profit ratio, recovery ratio, wastage ratio and such other ratios in respect of such sectors as may be prescribed.

- (3) Omitted.
- (4) Omitted.
- (5) Omitted.

(6) After completion of the audit the Commissioner shall, after obtaining taxpayer's explanation on all the issues raised in the audit, issue an audit report containing audit observations and findings.

(6A) After issuing the audit report, the Commissioner may, if considered necessary, amend the assessment under subsection (1) or sub-section (4) of section 122, as the case may be, after providing an opportunity of being heard to the taxpayer under subsection (9) of section 122.

- (7)
- (8)
- (9)

(10) Notwithstanding anything contained in sub-sections (2) and (6) where a person fails to produce before the Commissioner or a firm of Chartered Accountants or a firm of Cost and Management Accountants appointed by the Board or the Commissioner under sub-section (8) to conduct an audit, any accounts, documents, and records, required to be maintained under section174 or any other relevant document, electronically kept record, electronic machine or any other evidence that may be required by the Commissioner or the firm of Chartered

Accountants or the firm of Cost and Management Accountants for the purpose of audit or determination of income and tax due thereon, the Commissioner may proceed to make best judgment assessment under section 121 of this Ordinance and the assessment treated to have been made on the basis of return or revised return filed by the taxpayer shall be of no legal effect.

- (11)
- (12)
- (13)
- (14)
- (15)
- (16)
- (17)

Section 114. Return of income.- (1) Subject to this Ordinance, the following persons are required to furnish a return of income for a tax year, namely:-

-
- (1A)
- (2)
- (2A)
- (3)
- (4)
- (5)
- (6)

(6A) If a taxpayer files a revised return voluntarily along with deposit of the amount of tax short paid or amount of tax sought to be evaded along with the default surcharge, whenever it comes to his notice, before receipt of notice under sections 177 or sub-section (9) of 122, no penalty shall be recovered from him:

Provided that in case the taxpayer deposits the amount of tax as pointed out by the Commissioner during the audit or before the issuance of notice under sub-section (9) of section 122, he shall deposit the amount of tax sought to be evaded, the default surcharge and twenty-five percent of the penalties leviable under the Ordinance along with the revised return:

Provided further that in case the taxpayer revises the return after the issuance of a show-cause notice under sub-section (9) of section 122, he shall deposit the amount of tax sought to be evaded, default surcharge and fifty percent of the leviable penalties under the Ordinance along with the revised return and thereafter, the show cause notice shall stand abated.

- (7)

Rule 231F – Selection and conduct of audit.-(1).....

(2).....

(3) The cases selected for audit by the Board shall be processed and the Commissioner Inland Revenue concerned shall issue intimation letter to the taxpayer about the selection of his case for audit with the following details:-

- (a) section under which selection has been made;
- (b) tax year for which the case has been selected for audit;
- (c) mode of selection whether random or parametric;
- (d) compliance requirements on the part of taxpayer e.g.-
 - (i) provision of prescribed books of accounts;
 - (ii) supporting information and documents, etc;

(iii) computerized data, access to computerized data or provision of attested hard copies of computerized data.

(4) On completion of examination of books of accounts, data or information under this rule the discrepancies, if found, shall be intimated to the taxpayer for obtaining taxpayers' explanation, in the form of audit report, seeking taxpayer's explanation on these points.

(5) Explanations of the taxpayer, where found not acceptable, shall be intimated to the taxpayer, through a notice under section 122(9) of the Income Tax Ordinance, 2001 about the amendment in assessment along with the rationale or basis of such amendment and necessary amendment in assessment order shall be passed under section 122 of the said Ordinance after affording adequate opportunity of hearing to the taxpayer." (Emphasis supplied)

8. To ensure compliance with the above provisions of the Ordinance and to properly conduct an audit, the Assessing Officer should follow a structured and legally compliant process. Below are the steps in sequence for conducting an audit either selecting the case of the taxpayer under section 177 or 214C of the Ordinance, followed by the necessary steps for completing the audit proceedings:

i. Procedure for conducting an Audit by the Assessing Officer (AO) After Case Selection:

Once a case is selected for audit, the following steps should be followed by the AO as per the Income Tax Ordinance, 2001 and rules made thereunder:

1. Issuance of Intimation Letter:

The AO shall issue an intimation letter to the taxpayer about the selection of the case for audit, specifying:

- a) The section under which the selection has been made (e.g., Section 177 or Section 214C).
- b) The tax year for which the case is selected.
- c) The mode of selection (random or parametric).
- d) Compliance requirements for the taxpayer, such as providing books of accounts, supporting documents, and electronic records.

2. Request for Records:

- a) The AO shall request the taxpayer through a notice to provide the necessary documents, books of accounts, financial statements, and other necessary documents under section 174 of the Ordinance. If records are maintained electronically, access to the system/software should be granted by the taxpayer.

- b) If the taxpayer fails to provide the records, this should be documented on the order sheet for the reason that the proceedings under the Ordinance are quasi-judicial.

3. Examination of Records:

- a) **Legal Basis:** The AO will examine the provided records, documents, and accounts under Section 177(2), which includes investigating income, expenditures, assets, liabilities, and sectoral benchmarks if required.
- b) **Action:** The Assessing Officer (AO) will evaluate whether the records comply with tax laws and identify any discrepancies, omissions, or unexplained income or expenses. If any details are missing or require clarification, the AO shall request additional information in accordance with Sections 177(2A) and 177(6). Where necessary, the AO may issue a follow-up request or formally address discrepancies through a confrontation process. It is important to note that all audit proceedings scheduled by the AO with the taxpayer must be documented on the order sheet. This ensures that the proceedings reflect fairness, transparency, and adherence to due process, thereby facilitating both the department and the taxpayer in the event of litigation.

4. Taxpayer's Explanation:

Legal Basis: Upon receiving the taxpayer's reply or explanation, if discrepancies are identified, the Assessing Officer (AO) must formally confront the taxpayer in writing under Section 177(6), clearly detailing the findings.

Action: Conduct a thorough audit examination to identify discrepancies in the following areas:

- a) Declared income.
- b) Claimed tax deductions.
- c) Unexplained income or assets, such as bank credits or property purchases.

The audit findings should comprehensively address:

- (i) Discrepancies in declared income.
- (ii) Unsubstantiated claims.
- (iii) Non-declaration of certain assets or income.

5. Issuance of Audit Report:

After considering the taxpayer's explanations, the AO will issue a **formal audit** report under section 177(6) with findings, requests for clarification, and proposed tax. Confront the taxpayer with audit findings and provide them with an opportunity to explain discrepancies. Ensure all issues are clearly documented.

ii. Requirements for Completion of Audit and Disclosure of Proposed Tax Amount.

Upon completing the audit:

1. Issuance of Audit Report:

Under Section 177(6), the AO must prepare and share the audit report with the taxpayer, detailing the findings, discrepancies, proposed tax and issues raised during the audit. Provide the taxpayer with a chance to explain these findings before concluding the proceedings.

2. Disclosure of Proposed Tax Amount: Section 114(6A) of the Ordinance provides specific relief to taxpayers under certain conditions, and failure to comply with these provisions appears to undermine the protections and procedures established in this section.

- a) According to the first proviso to Section 114(6A), if the taxpayer voluntarily files a revised return, pays the tax shortfall or evaded amount with default surcharge before receiving a notice under Section 177 or Section 122(9), no penalty will be levied.
- b) In cases where the Commissioner points out discrepancies during the audit, the taxpayer must pay the tax sought to be evaded, default surcharge, and 25% of the leviable penalties along with the revised return.
- c) If the taxpayer revises the return after receiving a show-cause notice under Section 122(9), they must pay the tax, default surcharge, and 50% of the penalties. The show-cause notice will then stand abated.

The proposed tax amount and applicable penalties must be communicated to the taxpayer either during or after the audit but prior to the issuance of a notice under Section 122(9) of the Ordinance or before amending the assessment, as applicable. This ensures the taxpayer has the opportunity to avail the benefits provided under Section 114(6A) of the Ordinance.

iii. Remedy with the AO if Taxpayer Fails to File Books of Accounts.

If the taxpayer fails to provide the required books of accounts for an audit or incomplete record, the AO may proceed as follows:

A. Section 177(10): Authority to Proceed with Best Judgment Assessment.

Section 177(10) explicitly provides that when a taxpayer fails to produce the required records, documents, or books of accounts, the Commissioner may proceed to make a best judgment assessment under Section 121. This is a necessary and logical step because:

- **Audit Requirements Unfulfilled:** An audit under Section 177 requires the examination of books of accounts and relevant records. Without these, the AO/ auditor cannot perform the intended verification or reconciliation.
- **Statutory Safeguard:** The law anticipates such non-cooperation and empowers the assessing officer to rely on best judgment assessment, ensuring that non-compliance does not halt tax proceedings.
- **Presumption of Incorrect Declaration:** Under Section 177(2AA), if the taxpayer does not furnish records, provides incomplete records, or cannot explain defects in the records, the AO can presume that taxable income has not been correctly declared.
- **Sectoral Benchmarks:** The AO may determine the taxpayer's income based on sectoral benchmark ratios notified by the FBR (e.g., gross profit ratios, and net profit ratios).

B. Section 121: Best Judgment Assessment.

Under Section 121, the assessing officer can determine the taxable income and tax liability based on available information, external benchmarks, or reasonable estimates. This provision is specifically designed for situations where:

1. Records are not provided or are inadequate.
2. The taxpayer fails to justify discrepancies or provide explanations during the audit.

C. Conducting Audit Without Books of Accounts.

An audit fundamentally involves examining the financial records, documents, and explanations to assess the correctness of income declared, deductions claimed, and tax paid. Without access to books of accounts, the audit process is rendered incomplete. In such a scenario, the

only legally sound option is to terminate the audit and initiate a best judgment assessment under Section 121, as the taxpayer has violated their obligation under Section 174 (Maintenance of Records).

These procedures ensure fairness while maintaining the Commissioner's authority to enforce compliance with tax laws.

D. **Practical Approach in This Scenario.**

Given that the taxpayer has admittedly not provided books of accounts for the tax year in question:

1. The assessing officer should conclude the audit under Section 177(10) as non-productive due to non-cooperation.
2. Proceed to assess the taxpayer's income under Section 121, applying reasonable judgment based on:
 - a) Past tax filings.
 - b) Sectoral benchmarks.
 - c) Third-party information (e.g., bank statements, property records).

9. **Section 224 of the Ordinance** stipulates that any proceedings conducted under the Ordinance before the Commissioner are deemed to be judicial proceedings. In light of this, it is imperative for the Assessing Officer (AO) to maintain a comprehensive and accurate record of all proceedings on the order sheet. This includes documenting every audit proceeding scheduled with the taxpayer, as well as any correspondence, requests for information, or clarifications made during the process.

Maintaining a detailed order sheet serves several critical purposes:

1. **Ensures Fairness and Transparency:** By recording all interactions and actions taken, the process reflects a fair and transparent approach, safeguarding the rights of both the department and the taxpayer.
2. **Adherence to Due Process:** A well-documented order sheet demonstrates compliance with legal and procedural requirements, reinforcing the integrity of the proceedings.
3. **Facilitates Dispute Resolution:** In the event of litigation or appeals, the order sheet serves as a clear and reliable record of the actions undertaken, providing clarity on the issues raised, the taxpayer's responses, and the AO's determinations.

Therefore, it is crucial for the AO to diligently record all relevant proceedings and activities on the order sheet to uphold the principles of fairness, accountability, and legal compliance throughout the audit process.

10. We now address the objection raised by the learned AR for the appellant concerning the so-called audit report issued under Section 177(6) read with Section 177(10) of the Ordinance. This report was communicated via bar-coded Notice No. 100000186703688 dated January 29, 2024, and is incorporated on Page 2 of 21 of the impugned order dated February 29, 2024. The audit report exhibits substantial issues in both its substance and structure, which may undermine its validity and its compliance with the principles of transparency, fairness, and procedural integrity. A detailed analysis of the deficiencies in the report is provided below:

- i. **Absence of Clear and Comprehensive Audit Report Structure.**
 - * **Deficiency:** The report lacks a structured presentation. It does not clearly separate findings, analysis, legal basis, and conclusions, which are essential to a formal audit report.
 - * **Recommendation:** Reorganize the report into clear sections: (a) Introduction, (b) Summary of Audit Findings, (c) Detailed Observations, (d) Legal Analysis, (e) Recommendations/Proposed Tax, and (f) Taxpayer's Response and Next Steps.
- ii. **Failure to Summarize Findings for Quick Reference.**
 - **Deficiency:** The report does not include a summary of discrepancies or a consolidated table of adjustments proposed, making it difficult to assess the scope of issues at a glance.
 - **Recommendation:** Include an executive summary highlighting key findings, proposed adjustments, and their financial implications.
- iii. **Lack of Specific Legal Citations for Each Finding.**
 - **Deficiency:** While some findings refer to relevant sections of the Ordinance (e.g., Sections 177(6), 174(1), and 111(1)(b)), these references are inconsistent and do not always directly connect to the observations.
 - **Recommendation:** Clearly cite the specific legal provision applicable to each issue raised and explain its relevance to the observation.

iv. **Inadequate Documentation of the Audit Process**

- **Deficiency:** The report does not outline the steps taken during the audit process, such as the examination of records, correspondence with the taxpayer, or interim findings.
- * **Recommendation:** Include a detailed account of the audit process, including the dates of notices, responses, meetings, and any other significant events. This ensures transparency and procedural compliance.

v. **Ambiguity in Observations.**

- * **Deficiency:** Certain findings are vague and lack specificity. For instance:
 - Observation (a): "Other Revenues" declared at Rs. 20,55,400/- is mentioned without elaborating on what specific evidence was sought and why the provided documents were considered insufficient.
 - Observation (c): Complete bank statements are requested, but there is no detailed reasoning for treating "total bank credits" as unexplained income.
- **Recommendation:** Provide detailed reasoning for each observation, explaining why the provided evidence is inadequate or how it violates specific provisions of the law.

vi. **Procedural Non-Compliance in Confronting Findings**

- **Deficiency:** The report does not clearly specify the taxpayer's rights or explicitly provide them with an opportunity to respond before finalizing adjustments.
- **Recommendation:** Clearly state the taxpayer's right to provide explanations, along with timelines, and outline the consequences of non-compliance. Ensure the process adheres to the principles of natural justice.

vii. **Lack of Quantified Adjustments and Supporting Calculations**

- **Deficiency:** The proposed adjustments to income, expenses, or deductions are not quantified in monetary terms, nor are the calculations shared in the report.
- **Recommendation:** Include precise calculations for each adjustment with supporting documentation or benchmarks used for comparison (e.g., industry standards).

viii. **Ambiguity in Legal Analysis of Agricultural Income**

- **Deficiency:** The treatment of agricultural income under Section 111(1)(b) lacks clarity, as it does not justify the application of the "worked-back formula" in the taxpayer's case.
 - **Recommendation:** Clearly explain the rationale for the inclusion of agricultural income and provide detailed computations using the worked-back formula.
- ix. **Missing Acknowledgment of Taxpayer's Written Submissions**
- **Deficiency:** The report acknowledges receipt of the taxpayer's written reply but fails to address how this response was evaluated or why it was deemed unsatisfactory.
 - **Recommendation:** Acknowledge the taxpayer's submissions in detail, summarize their arguments, and provide reasons for rejecting or partially accepting them.
- x. **Missing Details on Proposed Tax and Penalties**
- **Deficiency:** The report does not specify the proposed tax adjustments or penalties applicable under Section 114(6A) for discrepancies identified during the audit.
 - **Recommendation:** Clearly disclose the proposed tax liability, penalties, and any surcharges. Ensure that this information is communicated transparently to the taxpayer.

By addressing these deficiencies, the audit report will align with legal and procedural requirements, ensuring fairness, transparency, and enforceability. Thus, the so-called audit report issued by the assessing officer is defective and contrary to the statutory provision.

11. On merit, the submissions made on behalf of the appellant carry weight. After thoroughly examining the submissions and evidence presented, the court concludes as follows:

Addition of Rs.98,103,385/- under Section 39 of the Ordinance

The addition made by the Assessing Officer (AO) on account of unreconciled credit entries in the appellant's bank accounts is reviewed in detail. It is observed that significant errors and omissions exist in the computation and assessment of the unreconciled amount.

i. Excess Attribution of Rs.15,158,016.18

- An amount of Rs.15,158,016.18, equivalent to USD 124,760.21, attributed as unreconciled, is explained as foreign remittances received in the appellant's bank account.
- The remitted amounts were reflected in the bank account as of June 30, 2018. The AO's contention that the source of these credit entries is unexplainable is erroneous.
- Supporting evidence in the form of bank statements establishes the explainable nature of these entries. Consequently, Rs.15,158,016.18 is incorrectly included in the unreconciled amount.

ii. Duplicate Addition of Rs.38,879,104.00

- An amount of Rs.38,879,104.00 is erroneously treated as unreconciled for two USD accounts (A/c Nos. 01180036019 and 02180070452) with Soneri Bank Ltd.
- The credited amount of USD 320,018 in A/c No. 01180036019 represents the encashment of Term Deposit Receipts (TDRs) purchased in 2013 and 2015, supported by a bank certificate. These transactions are time-barred for Tax Year 2018.
- Furthermore, the same amount is considered unexplainable in A/c No. 02180070452, which reflects an internal transfer of USD 320,000 from the first account. Bank account statements corroborate this.
- A total of Rs.77,758,208/- is thus incorrectly included in the unreconciled amount.

iii. Erroneous Addition of Rs.12,149,720.20

- The amount attributed as unreconciled in USD A/c No. 20004175949 pertains to foreign remittances and transfers from other accounts, as evidenced by the bank statement.
- These entries were overlooked during the assessment. Therefore, Rs.12,149,720.20 is fully explainable and incorrectly included in the unreconciled amount.

iv. Cash Deposits of Rs.3,016,545/-

- Cash deposits of Rs.1,853,921/- and Rs.1,162,624/- (totaling Rs.3,016,545/-) in PRs A/c 3038869367 with NBP represent pension payments, as evidenced by the pension book.
- The AO disregarded the documentary evidence, rendering this amount fully explainable.

v. Sale Proceeds of Land (Rs.4,000,000/-)

- An amount of Rs.4,000,000/- deposited in A/c No. 20003309418 with Soneri Bank Ltd. represents the sale proceeds of land, supported by evidence placed on record.
- This amount is fully explainable.

vi. Encashment of TDRs (Rs.23,000,000/-)

- The credited amount of Rs.23,000,000/- in PRs A/c No. 01020245753 with Soneri Bank on February 19, 2018, represents the encashment of TDRs purchased in February 2012.
- Bank statements and certificates substantiate this transaction. The amount is fully reconciled.

vii. Sale Proceeds of Vehicle (Rs.1,900,000/-)

- The deposit of Rs.1,900,000/- on October 11, 2017, in PRs A/c No. 081400168401 with HBL corresponds to the sale proceeds of a vehicle, as shown in the Wealth Statement for Tax Year 2017 (Annex N).
- This amount is fully explainable.

Conclusion

We find that the addition of Rs.98,103,385/- as unreconciled credit entries is not supported by factual evidence and contains significant computational errors. Based on the detailed review and the documentary evidence provided, the purported unreconciled amount is incorrectly assessed and should be excluded from the appellant's taxable income. Consequently, the addition to this account is hereby deleted.

12. Addition on Account of USD Accounts

The addition of Rs.90,769,804/- (USD 747,093.79) to the appellant's taxable income is found to be procedurally flawed. The amount in question was never specifically confronted in the notice issued under Section 122(9) of the Ordinance. Paragraph 2(f) of the notice referenced an amount of USD 1,291,854/- appearing in various foreign currency accounts. This amount, as

discussed in Paragraph 11 above, was already included in the addition of Rs.98,103,382.82. The Honourable Supreme Court of Pakistan, in the judgment titled ***CIR vs. RYK Mills*** (2023 SCMR 1856), has unequivocally held that a taxpayer must be confronted with specific allegations in a show-cause notice, along with the grounds for such allegations, to provide a meaningful opportunity for response. Relevant excerpts from the judgment underscore the necessity of issuing a fresh or supplementary show-cause notice if new grounds or factual aspects arise during the inquiry. Failure to do so renders any subsequent determination invalid. In this case, it is evident from the impugned order that the addition of Rs.90,769,804/- was made based on the appellant's reply without adequately confronting the taxpayer with the specific allegations. This procedural lapse is contrary to the principles laid down by the Honourable Supreme Court. Furthermore, as noted in Paragraph 11, a portion of the foreign currency account investment has already been explained and reconciled. Accordingly, the addition of Rs.90,769,804/- is invalid and is hereby deleted in light of the judgment in *CIR vs. RYK Mills* and the procedural deficiencies identified.

13. **Addition on Account of GBP**

The addition of Rs.3,796,023/-, equivalent to GBP 23,736, under Section 111(1)(b) of the Ordinance is found to be unjustified. Evidence submitted indicates that the GBP account in question is jointly held by the taxpayer and his son, who resides abroad. The account was maintained by the son and is duly declared in the taxpayer's wealth statement. Furthermore, the deposited amount originated from the taxpayer's daughter, who was also residing abroad at the time. Given the explanation and supporting evidence, the addition lacks merit and is hereby deleted.

14. In light of the above discussion, the impugned order passed by the assessing officer is legally untenable and is therefore annulled.

15. Let this order be sent to the learned Member (Operation) and Member (Legal) Federal Board of Revenue for the purposes of issuing instructions to all assessing officers to ensure compliance with the aforementioned legal provisions, procedures, directions, and their mandatory nature. They should also be apprised of the serious consequences that will follow for any officers who fail to strictly adhere to these provisions and procedures.

(M. M. AKRAM)
JUDICIAL MEMBER

(IMRAN LATIF MINHAS)
ACCOUNTANT MEMBER