

## KCO BLOGS 2020

This blog is written by **Mr. Abbas Shahid**. Please read this blog and provide your valued comments

### NOTICE UNDER SECTION 111(1) OF THE INCOME TAX ORDINANCE, 2001

The purpose of this blog is to explain whether there is need of issuance of separate notice under section 111(1) of ITO, 2001 or not?

#### UN-EXPLAINED INCOME

Any income which is not declared or concealed by anyway is said to be unexplained income. Commissioner may require for any information from the taxpayer about unexplained income through issuance of separate notice.

#### LEGAL REFERENCE

For ease of reference, the relevant extract from section 111(1) of the Income Tax Ordinance, 2001 is reproduced hereunder for ease of reference;

**Quoted** “111. *Unexplained income or assets.* — (1) *Where;*

- (a) *any amount is credited in a person’s books of account;*
- (b) *a person has made any investment or is the owner of any money or valuable article;*
- (c) *a person has incurred any expenditure; or*
- (d) *any person has concealed income or furnished inaccurate particulars of income including:*
  - (i) *the suppression of any production, sales or any amount chargeable to tax; or*
  - (ii) *the suppression of any item of receipt liable to tax in whole or in part*

*and the person offers no explanation about the nature and source of the amount credited or the investment, money, valuable article, or funds from which the expenditure was made suppression of any production, sales, any amount chargeable to tax and of any item of receipt liable to tax or the explanation offered by the person is not, in the Commissioner’s opinion, satisfactory, the amount credited, value of the investment, money, value of the article, or amount of expenditure suppressed amount of production, sales or any amount chargeable to tax or of any item of receipt liable to tax shall be included in the person’s income chargeable to tax under head “Income from Other Sources” to the extent it is not adequately explained.*

*Provided that where a taxpayer explains the nature and source of the amount credited or the investment made, money or valuable article owned or funds from which the expenditure was made, by way of agricultural income, such explanation shall be accepted to the extent of agricultural income worked back on the basis of agricultural income tax paid under the relevant provincial law.”* **Unquoted**

As per above mentioned provisions, it is clear that the section has three distinct and clearly defined stages.

1. First stage draws attention towards “*information*”.
2. Second towards “*discovery*” and
3. Lastly towards “*formation of opinion by the Commissioner*”.

As it is not clearly mentioned in the provisions about issuance of notice but the words “the person offers no explanation..... or the explanation offered by the person is not in the Commissioner’s opinion satisfactory” would show that for an explanation to be offered by the person, the taxpayer must have been issued a show-cause notice by the Commissioner. It is obvious that Commissioner can’t make any opinion without requiring/getting the information.

Many forums have provided decisions upon issuance of separate notice under section 111(1) of ITO, 2001 but here we will draw our attention towards the judgment bearing ITR No. 136801 of 2018 of Honorable Lahore High Court. The parties involved in this case are CIR, TRO, Faisalabad (Appellant; the department) Vs Faqir Hussain & another (Respondent; the taxpayer).

In the subject case, assessing officer become acquainted with that the captioned taxpayer concealed some asset. However, an assessing officer directly issued notice under section 122(9) without considering the 111 section of ITO, 2001. Being aggrieved the taxpayer filed appeal before CIR (A) who reduced the addition from 3,120,000/- to 1,920,000/-.

However, being still aggrieved the taxpayer filed second appeal before Appellate Tribunal Inland Revenue who decided the case in favor of subject taxpayer on the ground that department has not made mandatory compliance of Section 111 of ITO, 2001. Hon’ble ATIR placed reliance on *2010 PTD 704, 2015 PTD 1823, 2017 PTD 1839*.

Whereby Department filed reference application against the order of Appellate Tribunal Inland Revenue, Lahore Bench. And argued that ATIR can’t annulled the order of assessing officer merely on the basis of non-compliance of Section 111 of ITO, 2001. Upon couple of cross arguments, Hon’ble LHC quoted that non-issuance of proper notice is a serious matter of concern, on the basis of proceedings can be stopped. Hence, Hon’ble LHC decided the case in favor of taxpayer. The relevant extract from Judgement Sheet is reproduced hereunder for ease of reference;

***Quoted*** “*In the instant case, neither notice under Section 111 of the Ordinance of 2001 has been issued to the taxpayer nor was the taxpayer specifically confronted with such proposed addition so that the taxpayer could have advanced some explanation in this regard. Thus impugned addition appears to be without any lawful authority.*”

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11. So far as argument of learned Legal Advisors of applicant-department, with reference to the case of Abdul Ghani and Zamindara Paper and Boards Mills supra, that merely substance of notice is to be seen and mentioning of Section 111 with its all ingredients along with notice under section 122(9) read with contemplation of Section 111, therefore, same cannot be redundant.

12. In view of above, our answer to the proposed question is affirmative i.e. against the applicant-department and in favour respondent-taxpayers.” **Unquoted**

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