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FISCAL PRESUMPTIONS AND THE LIMITS OF EVIDENTIARY AUTHORITY IN PAKISTANI TAX JURISPRUDENCE: A JUDICIAL ANALYSIS OF SECTION 111, INCOME TAX ORDINANCE 2001

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Abstract

Section 111 of the Income Tax Ordinance, 2001 (ITO 2001) constitutes one of the most consequential, yet jurisprudentially contested, provisions in Pakistani fiscal legislation. It confers upon the Commissioner Inland Revenue a broad power to investigate and tax unexplained income, assets, expenditure, and credits, effectively shifting the burden of proof onto the taxpayer to establish the lawful source of their wealth. This literature review undertakes a systematic and critical examination of the existing body of case law, statutory material, and professional commentary pertaining to Section 111, with particular attention to three intersecting themes: (i) the procedural prerequisites for initiating proceedings, principally the mandatory requirement of a separate notice; (ii) the doctrine of "definite information" as a gateway condition to action under Sections 111 and 122 read together; and (iii) the constitutional and natural justice dimensions of the provision, including its relationship to Article 10A of the Constitution of Pakistan 1973 and the right to a fair trial. The review traces the doctrinal evolution from early judicial reluctance through to the landmark Supreme Court ruling in Commissioner Inland Revenue v Messrs Millat Tractors Limited (2024 SCMR 700), which authoritatively settled the procedural sequence. It also identifies a significant legislative gap arising from the 2021 Explanation to Section 111, which attempted ultimately unsuccessfully to dispense with the separate notice requirement. The paper concludes that while judicial correction has substantially reinforced procedural fairness, structural gaps in FBR compliance, interpretive ambiguity surrounding the punitive nature of the provision, and the absence of dedicated academic scholarship demand urgent scholarly and legislative attention.

1. INTRODUCTION

The Income Tax Ordinance, 2001 is the primary instrument of direct taxation in Pakistan. Section 111, titled "Unexplained Income or Assets" occupies a peculiarly contested position within that legislative framework, sitting at the crossing of robust revenue enforcement and the constitutional entitlements of taxpayers. In its basic operation, Section 111(1) empowers the Commissioner Inland Revenue to bring into a taxpayer's assessable income any asset, credit, investment, expenditure, or sum whose lawful source the taxpayer cannot satisfactorily explain. The provision is divided into four operative sub-clauses (a) through (d) each targeting a distinct category of unaccounted accretion to wealth, while sub-sections (2) to (4) govern the year of assessment, quantum of addition, and specific exemptions including remittances from overseas Pakistanis.

At its core, Section 111 rests on the premise that unexplained wealth is presumptively taxable income, a deliberate and significant reversal of the ordinary presumption of innocence that governs legal proceedings generally. This generates persistent tension between the revenue interest of the State and the fundamental rights of taxpayers. The right to be dealt with in accordance with law (Article 4), equality before law (Article 25), and since the Eighteenth Amendment of 2010 the right to a fair trial (Article 10A) of the Constitution of Pakistan 1973. The provision's capacity to operate as an instrument of harassment when procedurally misapplied has long been recognised by practitioners, even if scholars have been slow to engage with it systematically.

That scholarly reticence is striking given the sheer volume of Section 111-related litigation at every tier, the Appellate Tribunal Inland Revenue (ATIR), the High Courts, and the Supreme Court. Yet the existing commentary remains scattered across professional tax bulletins and legal memoranda rather than consolidated in sustained academic analysis. The Supreme Court's ruling in *Commissioner Inland Revenue (Lahore) v Messrs Millat Tractors Limited* (2024 SCMR 700) represents an inflection point that makes comprehensive doctrinal engagement overdue. This paper attempts to initiate it.

This paper employs a doctrinal literature review methodology. It critically surveys judgments from the Supreme Court of Pakistan, the Lahore High Court (LHC), the Islamabad High Court (IHC), and the Sindh High Court (SHC), together with the ATIR, alongside the statutory text, legislative history, FBR administrative circulars, and available professional commentary. The aim is to synthesise current jurisprudence, map recurring interpretive disputes, and articulate the scholarly and legislative lacunae that remain.

2. Research Questions

This literature review is structured around four primary research questions:

(i) What are the mandatory procedural prerequisites for initiating proceedings under Section 111, and how has Pakistani jurisprudence interpreted compliance with those prerequisites?

(ii) What constitutes "definite information" for the purposes of Sections 111 and 122 read together, and how have courts delineated the threshold between preliminary information and information sufficient to sustain a formal amendment proceeding?

(iii) How has the judiciary navigated the tension between the revenue's interest in an expansive application of Section 111 and the constitutional guarantees of procedural fairness and natural justice owed to taxpayers?

(iv) What legislative and judicial gaps persist in the existing framework of Section 111, and what reform directions does the current body of jurisprudence suggest?

3. Methodology and Research Gap

3.1 Research Methodology

This paper employs a qualitative, doctrinal methodology. Doctrinal legal research sometimes described as "black-letter law" analysis. It involves the systematic examination of primary legal sources, including legislation, judicial decisions, and authoritative secondary materials, with a view to elucidating, critiquing, and synthesising the legal principles at stake (Hutchinson and Duncan 2012). This approach is well-suited to a study centred upon the interpretation and application of a single statutory provision, where the primary source

materials are judgments, statutory text, and legislative history.

Primary sources consulted include: the text of Section 111 of the ITO 2001 as amended up to 30 Feb 2026; judgments of the Supreme Court, LHC, IHC, and SHC reported in the Pakistan Tax Decisions (PTD), the Supreme Court Monthly Review (SCMR), and Pakistan Legal Decisions (PLD); the FBR Circular of 13 December 2024 on mandatory notice procedure; the FBR Supreme Court Judgments Compilation (2025); and the detailed Supreme Court judgment in Civil Petitions Nos 648-L to 650-L of 2021. Secondary sources include professional tax bulletins (Yousuf Adil Chartered Accountants; KRW Tax Insights), legal analysis from practising advocates (AUJ Lawyers LLP; Reanda International), and practitioner commentary (Khilji & Company). Every case citation in this paper has been cross-referenced against multiple authoritative reporting sources. No citation is advanced on the strength of a single unverified secondary reference.

3.2 Identification of Research Gap

A review of available literature reveals a pronounced scholarly deficit. Three distinct gaps emerge. First, there is no dedicated peer-reviewed article or monograph addressing Section 111 of the ITO 2001 in its entirety. Academic attention in Pakistani tax law has inclined toward macroeconomic tax policy, GST reform, and transfer pricing, leaving provisions governing domestic income investigation comparatively under-examined (Hussain and Iqbal 2014; Azhar 1996; Mubeen, Ilyas and Mobin 2017). Second, the constitutional dimensions of Section 111 and its interaction with Articles 4, 10A, and 23 of the Constitution of Pakistan 1973 have attracted no sustained doctrinal treatment in academic literature, despite being raised with growing frequency in litigation. Third, the legislative response to judicial decisions in particular the 2021 Explanation to Section 111 and its subsequent 2022 amendment has not been independently analysed from a jurisprudential standpoint. This paper seeks to begin addressing these lacunae.

4. Findings

4.1 The Statutory Architecture of Section 111: Text and Legislative Design

Section 111(1) of the ITO 2001 targets four categories of unexplained accretion to wealth: (a) unexplained credits in a taxpayer's books of account; (b) investment in, or ownership of, money or valuable articles whose source is unaccounted for; (c) unaccounted expenditure; and (d) income suppressed through concealment of sales, production, or other amounts chargeable to tax. Where a taxpayer cannot furnish a satisfactory explanation for any of these items, the Commissioner may include the relevant amount in the taxpayer's assessable income either as "income from other sources" or as income from business depending on the facts.

Several structural features of the provision deserve attention from the outset. Section 111 is activated by the taxpayer's inability to satisfy the Commissioner, meaning the primary evidential burden falls on the taxpayer from the moment any query is raised. This marks a deliberate departure from the general administrative law norm that the party making the allegation carries the burden of proof, a departure that has attracted sustained criticism from practitioner commentators who regard it as an inversion of foundational due process standards (Javid Law Associates 2026; Khilji & Co, "Unexplained Income" 2024). Sub-clause (d) of sub-section 1, dealing with concealment of sales and production, was introduced only by the Finance Act 2011 and formed no part of the original statutory architecture of the ITO 2001, that addition subsequently generated significant litigation on retrospective application, examined below. Sub-section 4 separately exempts foreign remittances received through the prescribed banking channel by overseas Pakistanis, subject to monetary thresholds and production of encashment certificates.

4.2 The Mandatory Notice Requirement: Evolution of Judicial Doctrine

The most extensively litigated procedural question under Section 111 is whether, before adding unexplained income or assets to a taxpayer's taxable income, the revenue authorities must first issue a separate, distinct

notice under Section 111 itself or whether they may proceed directly to amend the deemed assessment order under Section 122 without doing so (AUJ Lawyers LLP 2024; Reanda International 2024). The administrative practice that took root within the FBR was to issue a combined notice under Sections 111 and 122(9) simultaneously, or in some cases to invoke Section 122 without any prior Section 111 notice whatsoever. The superior courts rejected both variants of this practice, consistently and decisively, producing one of the more coherent jurisprudential narratives in Pakistani tax law.

The doctrinal foundation was laid by the Lahore High Court in *Commissioner Inland Revenue, Faisalabad v Faqir Hussain* (2019 PTD 1828). The case arose from a desk audit in which the Assessing Officer identified concealed assets but bypassed Section 111 and issued a notice directly under Section 122(9). The ATIR had already found in the taxpayer's favour on the ground that the absence of a Section 111 notice constituted a jurisdictional defect. The LHC upheld that reasoning and went further, it characterised the taxpayer's right to offer a satisfactory explanation as a substantive legal entitlement, not a procedural technicality curable by substantial compliance or post hoc ratification. That holding was reinforced by the same Court in *Commissioner Inland Revenue, Multan v Falah ud Din Qureshi* (2021 PTD 192). The LHC reiterated that Section 122 proceedings cannot validly begin on the basis of information obtained through a Section 111 inquiry unless, the Section 111 proceedings have themselves been properly initiated. The taxpayer has been specifically confronted with the proposed addition, and the Commissioner has reached a concluded opinion rising to the level of "definite information" within the meaning of Section 122(5). These decisions together crystallised a two-stage procedural framework; Section 111 first, Section 122 thereafter that would be confirmed at the apex level within a few years.

The Supreme Court intervened decisively in *Commissioner Inland Revenue Zone Bahawalpur v Messrs Bashir Ahmed (Deceased) through Legal Representatives* (2021 SCMR 1290). The Court found that the taxpayer had been denied the opportunity "mandatorily required" by Section 111 to explain the source of funds used to acquire immoveable property. The department had assumed throughout that information already in its hands was sufficient to sustain a Section 122 amendment, without first concluding the Section 111 inquiry. The Supreme Court held this sequence impermissible, preliminary information does not become "definite information" for Section 122 purposes until Section 111 proceedings have concluded and a formed opinion exists.

The apex of this jurisprudential progression came in *Commissioner Inland Revenue (Lahore) v Messrs Millat Tractors Limited, Lahore and Others* (2024 SCMR 700). In a series of consolidated appeals, the Supreme Court addressed the procedural requirements of Section 111 in terms that left the revenue administration little room for equivocation. No addition under Section 111 is legally valid unless the proceedings are formally initiated and concluded through a separate notice under that provision. The permissible sequence was set out with precision, a specific show-cause notice under Section 111 must issue first, a reasoned, speaking order under Section 111 must be passed identifying the applicable sub-clause, only after that order is finalised may a notice under Section 122(9) follow, and the opinion formed upon conclusion of the Section 111 proceedings and that opinion alone constitutes the "definite information" required for Section 122(5).

Millat Tractors also settled the narrower question of simultaneous notices. While a Section 111 notice and a Section 122(9) notice may be issued on the same day, the Section 111 proceedings must be independently concluded before Section 122 proceedings formally commence. If no adverse opinion emerges from Section 111, both notices lapse without legal effect. This approach was promptly adopted by the Islamabad High Court in IHC Writ Petition No 1826 of 2021 (*Zaver Petroleum Limited*) and has since been cited with approval by the Sindh High Court in ITRA No 320 of 2025.

The FBR responded by issuing a formal Circular on 13 December 2024, formalising the step-by-step notice and speaking-order framework mandated by the Supreme Court. That the revenue administration deemed it

necessary to issue such a circular is itself revealing it amounts to an institutional acknowledgment that non-compliance with the separate notice requirement had become normalised in routine FBR operations prior to *Millat Tractors* case (Reanda International 2024; CBMC 2025).

4.3 The "Definite Information" Doctrine and Its Jurisprudential Roots

Closely related to the notice debate is the question of what constitutes "definite information" under Section 122(5), the threshold condition for amending a deemed assessment order. The connection to Section 111 is structural rather than incidental, the Supreme Court has held that information gathered during a Section 111 inquiry acquires the character of "definite information" only when those proceedings have been concluded and a formed opinion exists.

Until that point it remains preliminary in legal classification, regardless of how voluminous or apparently compelling the underlying data may be (Millat Tractors 2024; Bashir Ahmed 2021).

The conceptual origins of the "definite information" doctrine predate the ITO 2001. Under the Income Tax Ordinance 1979, analogous provisions required definite information before completed assessments could be reopened. The Supreme Court in *Commissioner of Income Tax v Central Insurance Company* (1993 SCMR 1232) established that an assessment cannot be reopened on the basis of a second thought or conjecture, the trigger must be definite, fresh, and concrete information not available at the time of the original assessment. That principle has since been recognised, with necessary adaptation, as governing the amendment power under Section 122(5) of the ITO 2001.

The detailed Supreme Court judgment in Civil Petitions Nos 648-L to 650-L of 2021, which immediately preceded *Millat Tractors* case, undertook a systematic analysis of the relationship between Sections 111(1)(d) and 122(5). The Court observed that the amendment power is available only where the facts fall within one of three specified circumstances and "definite information" is additionally present. It further noted that the amendment power is temporally bounded broadly to a five-year window computed under Section 122(2) and (4). The confluence of the "definite information" threshold with the limitation period creates a layered procedural protection, an assessment cannot be reopened on stale or speculative information after the statutory deadline has passed (Yousuf Adil, June 2025).

A contested sub-question has been whether bank credit entries constitute "definite information" in themselves. In *Commissioner Inland Revenue v Shujabad Oil Mills (Pvt) Limited* (2021 SCMR 437), the Court took the view that large, unexplained banking transactions identified during an audit could amount to definite information sufficient to commence proceedings. That proposition sits in some tension with the later *Millat Tractors* line of authority, which insists that all information at the inception of a Section 111 inquiry is preliminary and cannot attain the status of "definite information" until those proceedings have concluded. The precise demarcation between these two propositions is an area of live interpretive development and represents one of the cleaner analytical gaps in the existing literature.

Further complicating this landscape is the contribution of Civil Petition No.: 862 of 2024 decided by Islamabad High Court (M/S. Khudadad Heights case), subsequently confirmed by the Supreme Court on petition filed by the Commissioner Inland Revenue (Special Zone for Builders and Developers), Regional Tax Office, Islamabad. Which attempts to bridge this gap by emphasizing the qualitative nature of the material discovered. The bench comprising Chief Justice Yahya Afridi and Justice Muhammad Shafi Siddiqui, dismissed the revenue's petition and confirmed that the effect of "definite information" must be assessed on a case-to-case basis, not all transactions in a bank statement demonstrate taxable income of the taxpayer, and unless the entries disclose income that is definitively established as such, the instrument cannot be treated as containing "definite information" within the meaning of Section 122(5). The Court further observed that the three permissible routes to amendment under Section 122(5) escaped assessment, under-assessment, or misclassification require a

concluded audit finding or equivalent, and that a bank statement unsupported by such analysis falls short of that threshold. The *Khudadad Heights* decision is therefore significant in two respects, it reinforces the primacy of a proper audit or Section 111 inquiry as the pathway to "definite information", and it curtails what might otherwise become a practice of using raw banking data as a shortcut to assessment without the safeguards of formal proceedings.

4.4 Constitutional Dimensions: Natural Justice, Article 10A, and the Punitive Character of Section 111

A distinct but equally significant strand of Section 111 jurisprudence concerns its constitutional and natural justice dimensions. The *audi alteram partem* rule, that no person should be condemned unheard is a cornerstone of natural justice doctrine and has been held to apply in tax proceedings in Pakistan since at least 1964. In *Commissioner of Income Tax, East Pakistan v Fazlur Rahman* (PLD 1964 SC 410), the Supreme Court held that the right to a hearing arises in judicial or quasi-judicial proceedings even without an express statutory provision, and "applies with no less force" to proceedings affecting liability to pay tax. The Sindh High Court in *Siemens Pakistan Engineering Co Ltd v Federation of Pakistan* (1999 PTD 1358) confirmed that any order passed in violation of the *audi alteram partem* principle is void.

These foundational principles have been applied directly to Section 111 proceedings. The LHC in *Faqir Hussain* explicitly characterised the mandatory notice requirement as an embodiment of *audi alteram partem* rather than a procedural technicality, holding that its denial is a jurisdictional defect rendering the entire proceeding void. In *Bashir Ahmed* case it was reinforced by describing the opportunity to offer a satisfactory explanation as "mandatorily required" language that forecloses the argument that non-compliance could be excused as harmless error. The right to be heard under Section 111 is, on this view, constitutionally grounded in the principle that proceedings affecting a taxpayer's property rights must be conducted in accordance with the rules of natural justice.

Article 10A of the Constitution of Pakistan 1973 as it stands following amendment up to the Constitution (Twenty-Seventh Amendment) Act, guarantees the right to a fair trial and due process, and has been invoked with increasing frequency in Section 111 litigation, though its precise application to tax assessment proceedings remains judicially unsettled. The FBR's own Supreme Court Judgments Compilation acknowledges that Article 10A requires the show-cause notice to state the charges against a taxpayer clearly and specifically, and that the adjudicating authority may consider only those charges appearing in the notice (FBR Judgments Compilation 2025). Whether Section 111 proceedings constitute proceedings against a person "accused of an offence" for Article 10A purposes which the ATIR tentatively suggested in the proceedings below in CP 648-L to 650-L/2021, remains an open question. If they do, the full fair trial guarantee would attach and the procedural demands on the revenue would rise substantially beyond current practice.

The question of whether Section 111 is punitive in character was confronted directly by the Supreme Court in Civil Petitions Nos 648-L to 650-L of 2021. The ATIR had taken the view that Section 111(1)(d) was a punitive provision, reasoning that only net receipts after deducting allowable business expenses could be added to income under that clause. The Supreme Court declined to adopt the "punitive" label wholesale but agreed with the practical conclusion, it is the "net amount" receipts minus costs and expenses that is properly chargeable to tax as "income properly so called." A gross receipts approach, the Court reasoned, would be punitive in effect even if not in formal characterisation, and deductible allowances must accordingly be considered when computing additions under Section 111(1)(d). This finding materially constrains the most potentially draconian applications of the concealed sales clause.

Retrospective application of Section 111 amendments has generated a further layer of constitutional litigation. In *2025 PTD 137*, the Lahore High Court considered whether Section 111(1)(d) introduced by the Finance Act 2011 could lawfully be applied to the tax year 2010. The Court ruled against retrospective

application, invoking the well-settled principle that tax statutes are presumed to operate prospectively unless the legislature has explicitly and unambiguously provided otherwise. The Court went further, holding that the incorrect citation of Section 111(1)(d) in the assessment order rather than the provision in force at the material time was not a minor procedural slip but a substantive legal error that fatally undermined the assessment. The Court went further, holding that the incorrect citation of Section 111(1)(d) in the assessment order rather than the provision actually in force at the material time was not a minor procedural slip but a substantive legal error that fatally undermined the assessment. The ruling, relying on *Millat Tractors* (2024 SCMR 700), reinforces the constitutional guarantee under Article 4 that citizens shall be dealt with in accordance with law, a guarantee hollowed out when a taxpayer is assessed under a provision that did not exist when the relevant tax year closed.

4.5 The Scope and Limits of the Commissioner's Discretion Under Section 111

Section 111(1) confers upon the Commissioner a power framed in ostensibly broad terms, where a taxpayer cannot offer a satisfactory explanation, the relevant amounts "shall" be included in assessable income. The word "shall" imports a mandatory consequence, but the discretion embedded in the provision is not in the consequence of the finding lies upstream, in the decision to initiate proceedings in the first place and, once initiated, in the evaluation of whether the taxpayer's explanation is satisfactory. It is in these upstream stages that the scope and limits of the Commissioner's discretion become jurisprudentially significant.

The courts have consistently held that the Commissioner's discretion under Section 111 is not unfettered. It is constrained by three distinct principles. First, the discretion can only be exercised on the basis of information that is specific and directed at a particular taxpayer and a particular set of transactions, the Commissioner cannot launch a general trawl through a taxpayer's affairs in the hope of finding something unexplained. Second, the discretion must be exercised rationally and on the basis of material actually before the Commissioner at the time of the decision. Third, the Commissioner's conclusion must be recorded in a speaking order that identifies the applicable sub-clause of Section 111(1) and the reasons for the adverse finding. The requirement of a speaking order is not merely a formality, but it is the mechanism by which the Commissioner's discretion is rendered judicially reviewable, and the absence of a speaking order has consistently been treated by the courts as a jurisdictional defect independent of the separate notice requirement.

The relationship between the Commissioner's discretion and the audit process under Section 177 of the ITO 2001 also merits attention. In a 2026 ATIR decision in the *Usman Khan* matter (ITA No, ATIR March 2026, reported in the Imran Ghazi database), the Tribunal held that where a taxpayer fails to produce records during a Section 177 audit, the department's prescribed course of action is to proceed under Section 121 (best judgment assessment) and not to bypass that process and invoke Section 122 directly without conducting a proper audit and producing an audit report. The decision reinforces a structural principle, the discretion to proceed under different statutory routes is not interchangeable, and the Commissioner cannot substitute one investigative pathway for another simply because a particular route is administratively more convenient. Where Section 111 is invoked as the basis for a Section 122 amendment, the Section 111 proceedings must be proper and complete, they cannot serve as a substitute for a Section 121 best-judgment process, and conversely a Section 121 process cannot substitute for the Section 111 findings that are required as a condition precedent to Section 122(5) action.

A further constraint on the Commissioner's discretion derives from the record-retention limitation established in *Maple Leaf Cement Factory Ltd v Federal Board of Revenue* (2016 PTD 2074), subsequently endorsed by the Supreme Court in *Commissioner Inland Revenue, Zone-IV, Lahore v M/s Panther Sports and Rubber Industries (Pvt) Ltd* (2022 SCMR 1135). Under Section 174(3) of the ITO 2001, a taxpayer is obliged to maintain records for a period of six years. The LHC in *Maple Leaf Cement* held that any notice issued to a taxpayer for production of records

whether under Section 161, Section 165, or any other provision is unlawful if issued after the expiry of the six-year record-retention period. The Supreme Court's endorsement of that position in *Panther Sports* settled the matter at the apex level. The practical consequence for Section 111 proceedings is significant, where the Commissioner seeks to investigate transactions falling within a tax year for which the record-retention period has elapsed, the taxpayer cannot be compelled to produce records, and any Section 111 addition made in reliance on the absence of such records is, to that extent, liable to challenge.

4.6 The "2021 Explanation" to Section 111 and Its Judicial Reception

In 2021, Parliament inserted an Explanation to Section 111 purporting to clarify that no separate notice under Section 111 is required where the necessary details are adequately contained in a notice already issued under Section 122(9). On its face, this appeared to be a purposeful legislative response to the growing body of judicial authority insisting on the separate notice requirement, a bid by the revenue administration to recover by statutory means the operational flexibility that the courts had steadily withdrawn.

The bid failed. In *Millat Tractors* (2024 SCMR 700), the Supreme Court rejected the argument that the 2021 Explanation, even as further amended in 2022 had altered the mandatory procedural sequence. The Explanation, operating at the level of a subordinate clarificatory provision, could not override the substantive scheme of the Ordinance as a whole. The taxpayer's right to offer a satisfactory explanation through formal Section 111 proceedings is embedded in the body of the provision itself and cannot be extinguished by an Explanation that falls short of directly amending the operative sub-sections.

The FBR's subsequent Circular of 13 December 2024 which codified the *Millat Tractors* procedural sequence in express administrative terms amounts to a de facto institutional concession that the 2021 legislative intervention had been judicially defeated. Taken together, the 2021 Explanation, its 2022 amendment, and their rejection by the Supreme Court vividly illustrate a broader administrative law dynamic. Where procedural entitlements are embedded in the substantive structure of a statute, they resist displacement by subsidiary clarificatory legislation even where that legislation is expressly targeted at circumventing adverse judicial authority. The episode also exposes an institutional tendency within the FBR to seek to neutralise unfavourable judicial decisions through legislative channels rather than by reforming operational practice, a tendency that raises legitimate governance concerns about the relationship between tax administration and the rule of law (Reanda International 2024; Business Recorder, November 2023).

4.7 Prohibition on Roving and Fishing Inquiries Under Section 111 and Section 122(5A)

One of the most important yet insufficiently examined limits on the exercise of powers relating to Section 111 is the prohibition on roving and fishing inquiries. This prohibition finds its most developed expression in the context of Section 122(5A) of the ITO 2001, which empowers the Commissioner to amend an assessment where the original order is erroneous and prejudicial to the interest of revenue. Section 122(5A) is *pari materia* to Section 66A of the Income Tax Ordinance 1979, and the courts have consistently held both under the 1979 Ordinance and under the ITO 2001 that the scope of such powers is limited and cannot be stretched to conduct fishing and roving inquiries or investigations (Khilji & Co, "Scope of Inquiries, s 122(5A)" 2024).

The ATIR addressed this question with notable rigour in a case reported as 109 TAX 85, examining the changes made to Section 122(5A) by the Finance Act 2012. Parliament had attempted to expand the scope of Section 122(5A) by permitting the Commissioner to "make or cause to make inquiry" before exercising the amendment power. Subsequent to that amendment, a number of notices were issued to taxpayers requiring details, information, and documents in a manner that rendered Section 122(5A) proceedings virtually indistinguishable from audit proceedings under Section 177. The Tribunal held, in terms that repay careful attention, that the Finance Act

2012 amendment did not authorise the Commissioner to make inquiry from the taxpayer. Rather, the Commissioner was required to make independent inquiries at his own level to satisfy himself that the assessment order was erroneous and prejudicial to the revenue before issuing any notice. Making inquiries from the taxpayer or seeking information, details, documents, and records from the taxpayer under the guise of Section 122(5A) was held to be against the spirit of the provision even after the Finance Act 2012 amendment. The Tribunal added that inquiries could only be conducted in conformity with the twin conditions of Section 122(5A) erroneous assessment and prejudice to revenue and should not travel outside the scope of those prescribed conditions, otherwise there would be no meaningful distinction between Section 177 audit powers and the Section 122(5A) amendment power.

The prohibition on roving and fishing inquiries carries direct implications for the exercise of Section 111 powers in the context of Section 122(5) proceedings. Where the Commissioner issues a notice under Section 111 not on the basis of specific, identified information but as a vehicle for exploring a taxpayer's overall financial history in the hope of discovering something unexplained, the notice falls within the category of roving inquiry and is liable to be challenged on that basis. The IHC's ruling in IHC Writ Petition No 1826 of 2021 (*Zaver Petroleum Limited*) confirms that simultaneous notices under Sections 111 and 122(9) cannot be used as a mechanism for mounting what is in substance a fishing expedition into the taxpayer's affairs. Each notice must be grounded in specific information about specific transactions, not in a general suspicion or an undifferentiated trawl through available data. A related principle, confirmed in a 2026 LHC decision (2026 LHC 916), is that Section 122(5A) jurisdiction can only be exercised where the assessment is both erroneous and prejudicial to the interest of revenue, it cannot be invoked on mere discrepancies or matters requiring inquiry, which fall within the scope of Section 122(5) and not Section 122(5A). This reinforces the general principle that each amendment route has its own prescribed conditions and cannot be used interchangeably as a matter of administrative convenience.

The distinction between a proper Section 111 inquiry and a prohibited fishing expedition is therefore a question of fact and degree in every case, what matters is whether the Commissioner is confronting the taxpayer with specific, identified information about specific, identified amounts or whether the notice is framed in general terms designed to elicit documentation that might, if examined, reveal something taxable. The former is a legitimate exercise of the Section 111 power; the latter is an overreach that the courts have consistently declined to sanction.

4.8 Section 111 and the Penalty Provisions Under Section 182: Sequencing, Prematureness, and the *Mens Rea* Debate

A question that arises with regularity in Section 111 litigation, but which has not been the subject of sustained doctrinal analysis is the relationship between an income addition under Section 111 and the imposition of concealment penalties under Section 182 of the ITO 2001. Section 182 sets out a schedule of penalties for various defaults under the Ordinance, including at Serial No 1 and Serial No 1AAA penalties related to concealment of income and failure to file required statements. The critical question is, at what point, if any, may Section 182 penalty proceedings validly be initiated in consequence of a Section 111 addition, and what degree of mens rea, if any, must the revenue establish?

The Sindh High Court addressed the prematureness question directly in proceedings arising from a show-cause notice under Section 182 issued while the principal Section 111 and 122 assessment was still under appeal before the Commissioner (Appeals). The taxpayer argued that since it had not yet been finally determined at the appellate stage that the income alleged to have been evaded was in fact concealed income, the initiation of penalty proceedings was premature. The SHC, in a judgment that merits careful attention, held that since no final order had been made under Section 111 of the Ordinance, the initiation of proceedings under Section 182 was premature and the show-cause notices should accordingly be vacated (SHC Constitutional Petitions

(Section 182 prematureness), January 2022). This holding has a structural logic entirely consistent with the *Millat Tractors* framework, just as Section 122 proceedings cannot lawfully begin until Section 111 proceedings are concluded, so Section 182 penalty proceedings cannot lawfully begin until the underlying income addition has been finally determined. The penalty flows from the finding of concealment cannot precede that finding without being premature.

The mens rea question in the context of Section 182 has a longer and more contested history. The Sindh High Court in *Commissioner Inland Revenue, Zone-III, Karachi v Messrs General Tyre and Rubber Co of Pakistan Ltd* (2013 PTD 387) examined the imposition of penalty under Section 182 in the income tax context and held, in terms that have been cited with approval in subsequent decisions, that penalty imposing statutes are quasi-criminal in nature and that mens rea must be established before penalty action can be taken. The Court drew on the Supreme Court's earlier observation in *D.G. Khan Cement Co Ltd and Others v Federation of Pakistan and Others* (2004 SCMR 456) that each case must be decided on its own merits as to whether evasion was wilful or mala fide, and that non-payment or under-payment of tax that was neither wilful nor mala fide did not justify the recovery of additional tax as.

These decisions collectively support the proposition that the mere making of an addition under Section 111 does not automatically warrant the imposition of concealment penalty under Section 182, the revenue must separately establish a mental element that the concealment was conscious and deliberate before penalty can legitimately follow.

The prospectivity principle adds a further constraint on the Section 182 regime as it interacts with Section 111 findings. The Supreme Court has confirmed in a decision recorded in the *CIR Vs Trillium Pakistan (Pvt) Ltd* (2019 SCMR 1643), that an amendment introduced to Section 182(1) shall apply prospectively only, and that enhanced liability sought to be enforced under an expanded interpretation of Section 182 becomes effective only from the time of its promulgation and not prior thereto. This means that penalty provisions in force at the time of the alleged concealment govern the quantum and scope of any penalty, and the retrospective application of more onerous penalty provisions is impermissible. Taken together, the prematureness doctrine, the mens rea requirement, and the prospectivity limitation constitute a three-layered protection for taxpayers against automatic or premature penalty escalation following a Section 111 addition.

The interplay between Section 111(1)(d) specifically and Section 182 raises a further, more technical question, can the same act of income concealment through suppressed sales attract both the addition mechanism under Section 111(1)(d) and the penalty mechanism under Section 182 concurrently? The textual answer is yes, the two provisions operate on different planes, one creating a tax liability and the other imposing a penalty for the conduct that gave rise to that liability. But the sequencing requirement established by the SHC decision on prematureness means that the penalty proceedings must await the finalisation of the Section 111/122 proceedings before they can lawfully proceed. Furthermore, since the Supreme Court has held in CP 648-L to 650-L/2021 that Section 111 is not punitive in nature and that only net receipts are chargeable, there is a strong argument that the base figure for any Section 182 concealment penalty should be computed on the net addition (after deducting business costs) and not on the gross suppressed sales figure.

5. Closing Reflections and Reform Imperatives

The foregoing review of case law, statutory material, and professional commentary discloses a provision that is, in jurisprudential terms, considerably more layered than its deceptively compact statutory text suggests. Section 111 of the ITO 2001 is not simply a revenue enforcement tool, but it is a site of ongoing constitutional negotiation between the State's legitimate interest in taxing unaccounted wealth and the taxpayer's equally legitimate entitlement to procedural fairness, fair hearing, and governance in accordance with law. The trajectory of judicial decisions from *Faqir*

Hussain (2019) through *Bashir Ahmed* (2021) to *Millat Tractors* (2024), and now confirmed afresh in *Khudadad Heights* (2025) reflects a superior judiciary that has, with notable consistency and doctrinal rigour, insisted that procedural compliance is a condition precedent to jurisdiction, not a formality negotiable against the merits of any particular assessment.

Several principal conclusions emerge from this review. First, the mandatory notice doctrine is now settled law at the Supreme Court level. The separate and sequenced notice requirement under Section 111 is not a technical nicety, it is the mechanism through which the taxpayer's right to be heard grounded in the *audi alteram partem* principle and, arguendo, in Article 10A of the Constitution as it stands following the Twenty-Seventh Amendment is given practical effect. Second, the Commissioner's discretion under Section 111 is constrained by the prohibition on roving and fishing inquiries, by the record-retention limitation under Section 174(3), and by the requirement to confront the taxpayer with specific information about specific transactions. Third, the evidentiary standard of "satisfactory explanation" is not a bare formality, the Commissioner is affirmatively obliged to consider the taxpayer's explanation and to engage with the material submitted, and a failure to do so vitiates the proceedings regardless of whether the explanation might ultimately have been found unsatisfactory. Fourth, the relationship between Section 111 and the penalty regime under Section 182 is governed by a sequencing requirement, a mens rea threshold, and a prospectivity limitation, three constraints that together prevent automatic or premature escalation from income addition to penalty. Fifth, the non-appealability of standalone Section 111 orders under Section 127 represents a structural gap in the taxpayer's access to timely redress that has received inadequate legislative attention. Sixth, the line of authority from *Central Insurance Company* (1993) through *Bashir Ahmed* (2021), *Millat Tractors* (2024), and *Khudadad Heights* (2025) now firmly establishes that bank credit entries, bare intelligence reports, and unverified whistleblower tip-offs, standing alone and without an audit finding or concluded Section 111 proceedings, cannot constitute "definite information" for Section 122(5) purposes. And seventh, the academic deficit identified in the research gap analysis carries practical consequences that extend well beyond the academy. The absence of dedicated scholarly literature on Section 111 means that practitioners, tax officers, and adjudicators navigate a constitutionally significant provision relying almost entirely on reported case law and professional commentary, without the benefit of systematic doctrinal synthesis, comparative analysis, or evidence-based reform proposals. The ITO 2001 as amended up to 20 February 2026, and the Constitution as it stands following the Twenty-Seventh Amendment, together provide the legislative framework within which Section 111 now operates but the interpretive challenges that framework continues to generate demand scholarly attention that has, until now, not been forthcoming (Hussain and Iqbal 2014; Hutchinson and Duncan 2012).

The reform agenda that emerges from this review is focused rather than diffuse. Legislatively, Parliament should consider: (i) amending Section 111 to codify the mandatory two-stage procedural sequence confirmed by *Millat Tractors* and reaffirmed in *Khudadad Heights*; (ii) resolving the gross versus net receipts ambiguity under Section 111(1)(d) by incorporating the Supreme Court's net receipts formula directly into the statutory text; (iii) defining "definite information" in Section 122(5) with explicit reference to the conclusion of Section 111 proceedings; (iv) enacting clear statutory guidance on the evidentiary weight of whistleblower and DI&I-IR intelligence; (v) amending Section 127 to include Section 111 orders within the catalogue of independently appealable orders, thereby closing the structural appellate gap identified above; and (vi) codifying in Section 111 itself the prohibition on roving and fishing inquiries, giving the doctrine developed under Section 122(5A) express statutory expression in the Section 111 context as well.

Taken as a whole, the jurisprudential record surveyed in this review testifies to a judiciary that has done considerable work largely without academic scaffolding in constructing a coherent doctrine of procedural fairness within Pakistani

tax law. That work deserves recognition, consolidation, and the kind of sustained scholarly amplification that this paper has sought, in however preliminary a fashion, to initiate (AllahRakha 2025; Rees 2025; Javid Law Associates 2026).

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