

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Income Tax Reference No.01 of 2019

Commissioner Inland Revenue V/S *Masood-ul-Hassan Prop: M/s Prism Estate and Builders etc.*

JUDGMENT

Date of hearing	20.05.2024
Applicant (s) by	Ch. Manzoor Hussain, Advocate.
Respondent(s) by	M/s Sh. Istadamet Ali and Junaid Hassan Sheikh, Advocates.

JAWAD HASSAN, J. These Reference Applications No.01 of 2019, 02 of 2019 and 04 of 2019 under Section 133 of the Income Tax Ordinance, 2001 (the “*Ordinance*”) have been filed by the Applicant, being dissatisfied with the order passed by the Appellate Tribunal Inland Revenue, Islamabad Bench, Islamabad (the “*Appellate Tribunal*”) in ITA No.912/LB/2016 (Tax Year 2010), ITA No.913/LB/2016 (Tax Year 2011), ITA No.914/LB/2016 (Tax Year 2012), ITA No.722/LB/2015 (Tax Year 2010), ITA No.723/LB/2015 (Tax Year 2011) and ITA No.724/LB/2015 (Tax Year 2012) filed by the Respondent No.1 and cross appeals filed by the Applicant Department bearing Nos.ITA No.678/LB/2015 (Tax Year 2010), ITA No.679/LB/2015 (Tax Year 2011), ITA No.680/LB/2015 (Tax Year 2012), ITA No.386/LB/2016 (Tax Year 2010), ITA No.387/LB/2016 (Tax Year 2011) and ITA No.388/LB/2016 (Tax Year 2012), which are being dealt with and decided together as common question of law arises for an opinion of this Court.

2. Brief facts of the case are that proceedings under Section 122 of the “*Ordinance*” (Tax Years 2010, 2011 and 2012) were initiated against the Respondent No.1, on failure to submit satisfactory explanation by him which resulted into deemed assessments under Section 122(1) of the “*Ordinance*” vide order dated 31.12.2014. Further, undeclared balances were added under Section 111(1)(b) of the “*Ordinance*” (Tax Years 2010, 2011 and 2012) vide order dated 20.01.2015. The Respondent No.1 filed appeal against both orders before the Commissioner Inland Revenue (BTB), Rawalpindi which confirmed the additions vide order dated 30.03.2015 that was further challenged by the parties through cross appeals before the “*Appellate Tribunal*”, which cancelled the assessments made under Section 122(1) of the “*Ordinance*” by the Commissioner Inland Revenue (BTB), Rawalpindi vide impugned order dated 17.11.2018 on ground of jurisdiction, hence these applications. The operative part of the impugned order reads as:

“The impugned orders of amendment of assessment u/s 122(1) for all the years under appeal are illegal for having been passed by Commissioner BTB who did not have jurisdiction in the cases of existing taxpayers”.

3. Learned counsel for the applicant-department submits that the “*Appellate Tribunal*” has passed the impugned order ignoring the jurisdiction of Commissioner Inland Revenue (BTB) Rawalpindi vested on him specifically by the Chief Commissioner in terms of Section 209(1) of the “*Ordinance*” vide order dated 20.08.2014.

4. On the other side, learned counsel for the Respondent submits that the impugned order has been passed strictly in accordance with law and does not require any interference by this Court.

5. Heard. Record perused.
6. Needless to say that the “*Appellate Tribunal*” is the last fact finding forum in hierarchy of Taxation Laws, therefore, it is bound to discharge its functions diligently. Any opinion, on law, by the “*Appellate Tribunal*” would lose credence for consideration by High Court in advisory jurisdiction, if findings of fact arrived at by it are not trustworthy. In these applications, exercise of jurisdiction by the Commissioner Inland Revenue (BTB), Regional Tax Office, Rawalpindi is questioned. We are constrained to observe that “*Appellate Tribunal*” has failed to properly consider jurisdiction vested with the Commissioner Inland Revenue (BTB), Rawalpindi in the Respondent’s case vide order dated 20.08.2014. Section 209 of the “*Ordinance*” deals with the jurisdiction of income tax authorities which reads as

209. Jurisdiction of income tax authorities.---[(1) Subject to this Ordinance, the [Chief Commissioners], the Commissioners and the Commissioners (Appeals) shall perform all or such functions and exercise all or such powers under this Ordinance as may be assigned to them in respect of such persons or classes of persons or such areas as the [Board] may direct.

Provided that the Board or the Chief Commissioner, as the case may be, may transfer jurisdiction in respect of cases or persons from one Commissioner to another.]

7. Above provision of law is quite clear while dealing jurisdiction of income tax authorities as defined under Section 207 and their appointments in terms of Section 208 of the “*Ordinance*”. Section 209(1) of the “*Ordinance*” empowers the Chief Commissioners, the Commissioners and the Commissioners (Appeals) to perform and exercise powers as assigned to them in respect of persons or classes or areas on the directions of the Board. While proviso to Section 209 of the “*Ordinance*” empowers both the FBR and the Chief Commissioner to transfer jurisdiction in respect of cases or persons from one Commissioner to another. Above said section has already been elaborated in **“CHENAB FLOUR & GENERAL MILLS versus FEDERATION**

OF PAKISTAN and others” (PLD 2021 Lahore 343) wherein it has held as under:

“22. From plain reading of aforesaid section, it quite clear that this Section specifically deals with the jurisdiction of the income tax authorities. The income tax authorities are defined under Section 207 of the Ordinance while their appointments are made in terms of Section 208 of the Ordinance by the Board. According to Section 209(1), the Chief Commissioners, the Commissioners and the Commissioners (Appeals) perform and exercise powers as assigned to them in respect of persons or classes or areas on the directions of the Board (FBR). While Proviso to Section 209 of the Ordinance empowers both to the FBR and the Chief Commissioner to transfer jurisdiction in respect of cases or persons from one Commissioner to another. The definition of the term ‘Commissioner’ as provided under Section 2 (13) of the Ordinance, postulates that ‘Commissioner’ means a person appointed as Commissioner Inland Revenue under section 208 and includes any other authority vested with all or any of the powers and functions of the Commissioner. This leads to the unambiguous conclusion that Commissioner also includes any authority, which is vested with all or any of the power and functions of the Commissioner. Perusal of Impugned Notification clearly unveils that the same was competently issued under enabling provisions of the law and validly conferred jurisdiction of the Commissioner under the Ordinance pertaining to particular class of taxpayers as envisages under Section 209, subsection (8A) of which also provides that ‘the power to confer jurisdiction under this section shall include the power to transfer jurisdiction from one income tax authority to another’. Section 211 (3) of the Ordinance further laid down the same that ‘The Board or, with the approval of the Board, an authority appointed under this Ordinance, shall be competent to exercise all powers conferred upon any authority subordinate to it.’

8. In the case in hand, the Chief Commissioner, vide order dated 20.08.2014 transferred jurisdiction in respect of Respondent No.1’ case from Additional Commissioner Inland Revenue, Audit

& Enforcement-II, Zone-III, Regional Tax Office, Rawalpindi to Commissioner Inland Revenue (BTB), Regional Tax Office, Rawalpindi. Above said order reads as under:

 **Government of Pakistan
Inland Revenue Service
Regional Tax Office Rawalpindi** 

Dated: 26 August, 2014

ORDER

In supersession of all previous orders on jurisdiction in respect of below mentioned case and in exercise of powers and functions conferred by Section 209 (1) of the Income Tax Ordinance, 2001, the undersigned is pleased to transfer the jurisdiction in respect of case/person as mentioned in Column-I to the officer mentioned at Column-III of the Table below:-

S.No	Case I	From II	To III
			Commissioner Inland Revenue (BTB), Regional Tax Office, Rawalpindi
01	Mr. Masood-ul-Hassan Alvi (CNIC : 37405-5710990-5) Prop: M/S Prism Estate & Builders (NTN :2762009)	Additional Commissioner Inland Revenue Audit & Enforcement-II, Zone-III, Regional Tax Office, Rawalpindi	

2. This order will come into force with immediate effect.


(AFTAB AHMED)
Chief Commissioner

Copy to:-

1. Commissioners Inland Revenue (BTB), RTO, Rawalpindi.
2. Additional Commissioner Inland Revenue, Audit-II, (Zone-III), RTO,
Rawalpindi.


(ABDUR RAZZAQ KHAN)
Deputy Commissioner (HQs)


ALI MOHAMMAD
Additional Commissioner Inland Revenue
City Zone
Regional Tax Office, Rawalpindi

9. Record also indicative of the fact that the Respondent No.1 had not taken the objection with regard to jurisdiction of Commissioner Inland Revenue (BTB), Regional Tax Office, Rawalpindi at the time of filing reply to show cause notice or at

time of filing appeal before the Commissioner of Inland Revenue (Appeals-III), Rawalpindi. It has been held in case of “CHIEF ENGINEER, HYDEL (NORTH) AND PROJECT DIRECTOR, WAPDA, WARSAK versus ZAFRULLAH SHAH and another” (**2003 SCMR 686**) that “*no objection to the jurisdiction of a Court or Tribunal is taken in the forum of first instance it cannot be raised either in appeal or in revision.*” Even otherwise, no prejudice is caused to Respondent No.1 in connection with question of jurisdiction in light of aforementioned order dated 20.08.2014, which speaks loud and clear on aspect of jurisdiction absolutely against stance assumed by the Respondent No.1, which order dated 20.08.2014 has either not been gone through by “*Appellate Tribunal*” or the same has been skipped by him. As such, impugned order dated 17.11.2018, being outcome of non-reading and misreading of record, is not sustainable in the eye of law.

10. In view of above, these Reference Applications are **decided** in favour of the Applicant.

11. Office shall send a copy of this order under seal of the Court to the “*Appellate Tribunal*” as per Section 133(5) of the “*Ordinance*”.

(MIRZA VIQAS RAUF)
JUDGE

(JAWAD HASSAN)
JUDGE