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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Income Tax Reference No.64481 of 2022

Commissioner Inland Revenue Versus *Muhammad Afzal Cheema*

JUDGMENT

DATE OF HEARING 15.03.2023

APPLICANT BY Raja Sikandar Khan, Advocate

RESPONDENT BY Mr. Shahbaz Butt, Advocate

RAHEEL KAMRAN, J. – In this reference application under Section 133(1) of the Income Tax Ordinance, 2001 ('Ordinance'), the following question of law has been proposed for our opinion which is asserted to have arisen from the order dated 17.05.2022 passed by the Appellate Tribunal Inland Revenue, Lahore ('Tribunal') in ITA No.4094/LB of 2021:-

"Whether general condonation of limitation under Section 214A of Income Tax Ordinance, 2001, Section 74 of Sales Tax Act, 1990 and Section 43 of Federal Excise Act, 2005 amid lockdowns and rise in Corona Virus cases and slowdown in the economy made by the Federal Board of Revenue vide its C. No. 3(22) S (IR-Operations)/2020 dated 30th June 2020 is ultra vires of the powers of the Federal Board of Revenue under Sections 214A of Income Tax Ordinance, 2001, Section 74 of Sales Tax Act, 1990 and Section 43 of Federal Excise Act, 2005?"

2. Relevant facts of the case, briefly, are that legal proceedings were initiated against the respondent being an individual taxpayer deriving income from running a Rice Mills under the name & style of M/s Qader Dad Rice Mills, as a result of information available with the department that taxpayer had made investment for the purchase of immovable property measuring 25-kanals 11-marlas land for a consideration of Rs.8,500,000/. In that regard, necessary notices under

sections 122(9) and 111(1)(b) of the Ordinance each dated 16.11.2020 were issued to the respondent who furnished reply dated 23.11.2020 alongwith certain documents. The Officer Inland Revenue passed the Order in Original dated 31.12.2020 ('OIR') and made addition under section 111(1)(b) of Rs.34,47,938/- while determining taxable income of the respondent at Rs.4,297,938/-. The respondent-taxpayer, being aggrieved of the OIR, filed first appeal before the Commissioner Inland Revenue (Appeals) ('CIR(A)') raising various legal and factual grounds including the plea that the OIR was beyond limitation under Section 122 of the Ordinance as limitation for the tax year 2014 in the instant case expired on 30.06.2020 whereas the OIR passed order on 31.12.2020 and that the alleged extension in limitation granted by the FBR was neither valid nor applicable. The CIR(A) dismissed appeal of the respondent vide order dated 09.08.2021. The respondent, being aggrieved, preferred an appeal before the Tribunal against the aforementioned order passed by the CIR(A) being ITA No.4094/LB of 2021 which was allowed vide order dated 17.05.2022 in the terms as follows:

"For what has been stated above, we find that the extension of limitation as laid down in Section 122(2) cannot be altered, amended, changed by Federal Board of Revenue under the law as it amounts to legislation which exclusively falls in the domain of the Legislature and the exercise of power under section 214A cannot be inferred to be regarded as delegation of power to FBR to legislate, to amend the existing provision of a statute.

As a sequel to the above, we cannot condone the act of the CIR/OIR in placing reliance on an extension of limitation granted through Notification dated 30.06.2020 as reliance whereof is of no legal effect. As this Appellate Tribunal is limiting its assessment of the case to the issue of limitation alone, there is no need to discuss the merits of the case."

3. Learned counsel for the applicant states that general condonation of limitation under Section 214A of the Ordinance was granted vide Notification dated 30.06.2020 amid lockdowns and rise in the COVID-19 cases, which was issued with lawful authority, therefore, the impugned order of the Tribunal is clearly unsustainable in law.

4. Conversely, learned counsel for the respondent has supported the impugned order for the reasons stated therein.

5. Arguments heard. Record perused.

6. Section 120(1) of the Ordinance states that where a taxpayer has furnished a complete return under sub-section (6) of Section 114 of the Ordinance for a tax year, the same shall be taken to have made assessment of taxable income for that year. The Commissioner has been vested with authority under Section 122, subject to the provisions of that section, to amend an assessment order under Section 120 by making such alterations or additions as the Commissioner considers necessary. For the purpose of amendment of assessment, not only sub-section (2) of Section 122 of the Ordinance specifies a period of limitation of five years from the end of the financial year in which the Commissioner has issued or treated to have issued the assessment order to the taxpayer but a prohibition has been stipulated on passing such order after expiry of the period of limitation prescribed. In the instant case, the order of amendment of assessment was passed on 31.12.2020 in relation to the tax year 2014 the period of limitation for which, in terms of Section 122(2) of the Ordinance, was due to expire on 30.06.2020.

7. Section 214A of the Ordinance, at the relevant time, conferred authority upon the Federal Board of Revenue ('Board') regarding condonation of time limit in the following terms:-

Condonation of time limit.--Where any time or period has been specified under any of the provisions of the Ordinance or rules made thereunder within which any application is to be made or any act or thing is to be done, the Board may, in any case or class of cases, permit such application to be made or such act or thing to be done within such time or period as it may consider appropriate.

8. In terms of Section 214A of the Ordinance, the Board has been empowered to permit any act or thing to be done within such period as it may consider appropriate after expiry of the time frame stipulated in the Ordinance. Passing an order for the amendment of assessment is certainly an act or thing to be done under the Ordinance. The limitation prescribed in Section 122(2) *ibid* is restricted in its application to section 122 of the Ordinance whereas Section 214A of the Ordinance is of general applicability and applies to all provisions of the Ordinance and rules framed thereunder. The purpose of Section 214A *ibid* apparently is to give a separate overriding power to the Board to permit any act or thing to be done under the statute within such time period as it may deem appropriate, which is independent of any other provision of the Ordinance that provides a time frame. Thus, while applying the principle of harmonious construction, it is found that the Board apparently has the power under Section 214A of the Ordinance to permit passing of an order under the aforesaid section within such time as it may consider appropriate. This, however, does not mean that in exercise of its discretionary power under Section 214A of the Ordinance, the Board can run riot to extend time whenever and for however long it feels expedient to do so. In exercise of such discretionary power, the Board cannot destroy vested rights or reopen past and closed transactions.

9. It is trite law that the exercise of any discretionary power must be rational and have a nexus with the object of the underlying legislation. Arbitrariness is the antithesis of the rule of law. Whenever the legislature confers a wide ranging power, it must be deemed to have assumed that the power will be: firstly, exercised in good faith; secondly, for the advancement of the objects of the legislation; and thirdly in a reasonable manner. Section 24A of the General Clauses Act, 1897 reiterates the principle that statutory power is to be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment and further clarifies that an executive authority must give reasons for its decision. Needless to observe that such exercise of discretionary power remains amenable to judicial scrutiny. In the case

of *The Collector of Sales Tax, Gujranwala and others vs. Super Asia Muhammad Din and Sons and others (2017 PTD 1756)* wherein, while interpreting identical provision of Section 74 of the Sales Tax Act, 1990, the Supreme Court held as under:-

"Thus we are of the opinion that while undoubtedly the Board has the power under section 74 supra to extend the time limit and permit an order under section 36 supra to be passed within such time or period as it may consider appropriate, such power must be exercised within a reasonable time period of six months from the date when the time period provided in the first proviso to section 36(3) supra and the extension granted thereunder have lapsed, and such power can only be exercised (by the Board under section 74 supra) to grant an extension of not more than a reasonable time period of six months."

However, in the case of *Federal Board of Revenue through its Chairman, Islamabad and others vs. Abdul Ghani and another (2021 SCMR 1154)*, the Supreme Court of Pakistan disapproved an order passed by the Board under Section 74 of the Act for the reason that the same failed to state any reason for extending the limitation period for issuance of show cause notice whereas in another case titled *Faisalabad Electricity Supply Company Limited vs. The Federation of Pakistan and others (2021 SCMR 1463)* it was held that the executive remedy under Section 74 of the Sales Tax Act was not permissible in relation to any proceedings which were pending before a judicial forum or had become time barred on account of judicial findings given by such a forum. However, where notice for amendment of assessment has been issued within the period of limitation prescribed in Section 122(2) of the Ordinance and final order therein could not be passed therein manifestly for any justifiable reason beyond the control of the revenue authority or the taxpayer, exercise of discretionary power on part of the Board under section 214A of the Ordinance to extend time to complete the proceedings within a reasonable period may be justified in our opinion.

10. To ascertain whether the Board properly exercised its discretion *inter alia* under Section 214A of the Ordinance in granting general condonation of limitation here, it is necessary to examine contents of the

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Notification dated 30.06.2020 ('Notification'), which is reproduced below:-

**Government of Pakistan
Revenue Division
Federal Board of Revenue
Inland Revenue**

C. No. 3(22) S (IR-Operations)2020 Islamabad, the 30 June, 2020

All Chief Commissioners IR
LTUs/CRTOs/RTOs

Subject: General Condonation of Limitation U/S 214A of Income Tax Ordinance, 2001, Section 74 of Sales Tax Act, 1990 And Section 43 of Federal Excise Act, 2005- Amid Lockdowns And Rise In Corona Virus Cases

I am directed to refer to the subject and to state that due to the situation created by COVID-19 across the country resulting in lockdowns and slowdown in the economy, the Competent Authority has been pleased to grant general condonation of limitation U/S 214A of Income Tax Ordinance, 2001, section 74 of Sales tax Act, 1990, and section 43 of Federal Excise Act, 2005 up to 31-12-2020 for finalization of proceedings in cases involving matters such as:-

- (i) Finalization of issues pertaining to tax year 2014;
- (ii) Cases set aside by appellate fora;
- (iii) Cases where notices in pursuance of section 122 of the Income Tax Ordinance, 2001 were issued prior to 30.06.2019 and are to be hit by limitation on 30.06.2020;
- (iv) Sales Tax cases where mandatory period for issuing notices under sub-section 5 of section 11 of Sales Tax Act, 1990, is also expiring on 30.06.2020.
- (v) Finalization of proceedings under Federal Excise Act, 2005 in cases which are going to be hit by limitation on 30.06.2020.

(Tariq Javed)
Secretary (IR-Operations)

11. From perusal of the Notification dated 30.06.2020, it is evident that general condonation of limitation under section 214A of the Ordinance has been granted for a period of six months manifestly on the pretext of the situation created by Covid-19 across the country resulting in lockdowns etc. On 11th March 2020 the World Health Organization declared the novel Coronavirus (COVID-19) outbreak a global pandemic. The said pandemic created uncertainty and stress for all sectors for reasons beyond their control with all markets closed, all factories, enterprises, in fact everything came to a standstill and all major economies world over announced bail out packages and regulatory relaxations under the various laws. Unprecedented lockdowns were announced in March 2020 while taking into consideration the spread of the deadly virus affecting people of all classes. In recognition of the situation, the Supreme Court of Pakistan,

in exercise of powers under Article 191 of the Constitution of Islamic Republic of Pakistan, 1973 and the Supreme Court Rules, 1980 issued Notification dated 26.03.2020 to exclude the period of limitation under Section 4 of the Limitation Act, 1908 for the period specified therein for those litigants who were unable to approach the Supreme Court on account of the lockdown announced by the Federal/Provincial Governments. To somewhat similar effect, this Court issued Notification dated 27.03.2020 to exclude the limitation under Section 4 of the Limitation Act, 1908 w.e.f. 24.03.2020. In our opinion, COVID-19 pandemic provided a valid reason for the exercise of discretionary power under Section 214A of the Ordinance. Additionally, the condonation of limitation under the notification was until 31.12.2020 i.e. the period of six months, which satisfies the requirements of proportionality and reasonableness as laid down by the Supreme Court in the case of *Super Asia Muhammad Din and Sons and others* (supra). Therefore, the Tribunal acted erroneously in declaring the Notification dated 30.06.2020 to be *ultra vires* and of no legal effect. Accordingly, the question referred to us for opinion is answered in negative. i.e. in favour of the applicant and against the respondent.

12. Relief in the titled reference application, however, depends on how far the applicant is entitled to claim benefit of the Notification. The applicant has relied on clause (i) of the Notification to claim the benefit of extension of limitation under Section 214A of the Ordinance whereas it is case of the respondent that the period of limitation in cases falling under Section 122 of the Ordinance was manifestly extended in clause (iii) only and that too in cases where notices under that provision were issued prior to 30.06.2019 which undeniably was not the case here, and that clause (i) of the Notification had no applicability in the instant case.

13. Undisputedly, clause (iii) of the Notification only applied to the class of cases wherein notice under Section 122 of the Ordinance was issued prior to 30.06.2019. In the instant case, such notice was issued

on 30.11.2020, therefore, this case against the respondent did not fall within the ambit of clause (iii) of the Notification.

14. Clause (i) of the Notification manifestly contained a general provision qua condonation of limitation for finalization of issues pertaining to tax year 2014 which, in its application, was not confined to the Ordinance. In the presence of a specific clause (iii), how far the general provision in clause (i) of the Notification would apply to extend limitation in cases under section 122 of the Ordinance is not free from doubt. Be that as it may, clause (i) of the Notification makes it abundantly clear that application of that provision is confined to “finalization” of issues pertaining to tax year 2014. The words “finalize” and “finalization” have not been defined in the Ordinance or the Notification, therefore, the same are to be construed in terms of ordinary grammatical meanings thereof as contained in the English Dictionary, some of which are reproduced herein below:-

Chambers Concise Dictionary

Finalize:

1. to complete (an agreement or transaction)
2. to arrive at the final form of something. Put the finishing touches to it.

The American Heritage Dictionary (Fifth Edition)

to put into final form.

Random House Webster's Unabridged Dictionary (Second Edition)

to put into final form, complete all the details of.

Collins English Dictionary

Finalization. A person, thing or even which finalizes a situation or process.

15. From the above definitions, it is abundantly clear that “finalization” is synonym for closing, completion, culmination of something which is already in progress or has already been commenced. Therefore, applicability of clause (i) of the Notification is confined to extension of limitation in the class of cases involving tax

year 2014 for closing or completion wherein proceeding had already been commenced within the period of limitation, which clearly is not the case here since the notice under Section 122 was issued to the respondent on 30.11.2020. We are unable to give expansive interpretation to the word “finalization” used in clause (i) of the Notification to authorize commencement of proceedings in relation to issues pertaining to tax year 2014 after expiry of the period of limitation specified in Section 122 of the Ordinance.

16. For the foregoing reasons, the applicant is not entitled to the benefit of the Notification claimed by him, therefore, this reference application is **dismissed**.

17. Office shall send a copy of this order under seal of the Court to the Tribunal as per Section 133(5) of the Income Tax Ordinance, 2001.

(***SHAHID KARIM***)
JUDGE

(***RAHEEL KAMRAN***)
JUDGE

Announced in open Court on **22.05.2023.**

JUDGE

JUDGE

Approved for reporting.

JUDGE

JUDGE

*Z.A.Manzoor *