

Tax

34/25

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petition No. 2135-L of 2020

(Against the judgment/order dated 25.09.2020
of the Lahore High Court, Lahore passed in
W.P.No.42411/2017)

Commissioner Inland Revenue, Lahore and others. ... Petitioners

Versus

Salman Butt and others. ... Respondents

For the Petitioners:

Mr. Muhammad Saeed Tahir, ASC.
[Via Video-link from Lahore]
Dr. Ishtiaq Ahmed Khan,
Director-General Law, FBR.
Dr. Khalid Malik,
Director (Law), FBR
[At Islamabad]

Respondent No.1:

Ex-Parte.

Date of Hearing:

08.05.2025.

ORDER

Muhammad Shafi Siddiqui, J. A writ petition challenging a notice dated 17.11.2016 issued by petitioners was challenged by the taxpayer on the count that it violates the findings and law laid down in *Maple leaf*.¹

2. Lahore High Court allowed the petition however observed that proceeding of audit may continue but the taxpayer shall not be required by the department to produce record, on account of lapse of statutory timeframe

¹ Maple Leaf Cement Factory Ltd. v. Federal Board of Revenue (2016 PTD 2074).

prescribed to retain document in terms of section 174(1) of the Income Tax Ordinance, 2001(hereinafter referred to as '**the Ordinance**').

3. Notices were ordered in this CPLA whereas respondent chose not to appear and an *ex-parte* order was passed by this court on 16.09.2022 as under:

"Nemo. The office report states that the respondent's wife declined to receive the notice which was thereafter pasted on the outer door of his house. The notice was sent to the respondent earlier as well vide orders dated 20.09.2021 and 24.05.2022. Today, the respondent is not in attendance personally or through his representative. He is accordingly proceeded against ex-parte.

*2. The instant matter pertains to tax year 2010. The petitioner was issued a show-cause notice under Section 122(5A) of the Income Tax Ordinance, 2001 ("**Ordinance**") and subsequently an adverse order was passed on 27.02.2015. Thereafter, his appeal was allowed and the matter was remanded on 19.08.2015. The question is whether the respondent was bound to maintain his tax records after the expiry of 05 years from the date of his deemed assessment for the tax year 2010 which was on or about 30.09.2010.*

3. Learned counsel wishes to place on record the original show-cause notice as well as the re-assessment order dated 27.02.2015 in order to establish that the proviso to section 174(3) of the Ordinance is applicable. Allowed. Adjourned."

4. We have heard the learned counsel for the petitioner and gone through the order, impugned before us. It seems that a blanket cover is given to the taxpayer as far as retention of record is concerned. No doubt a timeframe is prescribed under the law i.e. section 174(1) of the Ordinance for retaining the documents however it is supplemented by the proviso alongwith an explanation inserted by Finance Act, 2010. The proviso with explanation reads as under:

"174. Records.

- (1)...
- (2)...
- (3)...

[Provided that where any proceedings is pending before any authority or court the taxpayer shall maintain the record till final decision of the proceeding:

Explanation.— Pending proceedings include proceedings for assessment or amendment of assessment, appeal, revision, reference, petition or prosecution and any proceedings before an Alternative Dispute Resolution Committee]

5. We have perused that the subject matter pertains to deemed assessment for the tax year 2010. The show cause notice and reassessment orders were dated 27.02.2015 (within timeframe prescribed by law) which falls within the proviso to section 174(3) of the Ordinance. The cognizance was taken with five years when notice was issued and notwithstanding the interim order, in the said case/litigation on the subject of challenging a notice, the taxpayer is bound to retain documents under the law. Such proposition came for consideration before this Court in the case of *Panther*² when this Court observed as under:

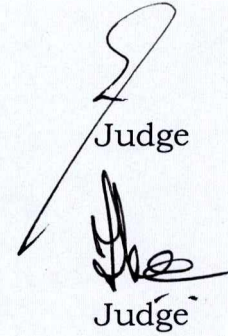
“Reading of the Ordinance and Rules envisages that any proceedings against a taxpayer that is based on the tax record maintained by the taxpayer should be initiated within a fixed timeframe. Section 174 creates an obligation on the taxpayer to maintain such accounts, documents and records as prescribed for a period of six year, except in case of pending proceedings, where the obligation of a taxpayer to maintain the record is till the final decision of the proceedings (exception is not attracted the present case), while the same provision protects the taxpayer from being asked to produce the record beyond the said period.”

6. Therefore, whether or not any stay is operative in the matter, if the cause is *sub judice* it is enough for proviso to kick in and dilute the effect of six years timeframe till the matter is taken to its logical end under the law, provided that the initial notice was also within time prescribed by law. The requisite proviso may enable the department to act accordingly.

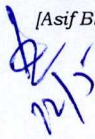
² Commissioner Inland Revenue v. Panther Sports and Rubber Industries (Pvt). Ltd. (2022 SCMR 1133).

7. We therefore to this extent convert this civil petition into appeal, impugned order to the extent of such direction is set aside and appeal is allowed to such extent.


Chief Justice


Judge

Islamabad:
08.05.2025
[Asif Bhatti]



Approved for Reporting