

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB
MR. JUSTICE YAHYA AFRIDI

Civil Appeal Nos. 656 to 659 of 2011

(On appeal from the judgment/order dated 24.12.2010 of the High Court of Sindh, Karachi passed in WTRA No. 27 to 30/1998)

Commissioner Inland Revenue Legal **...Appellant(s)**
Division, RTO III Karachi

VERSUS

Mst. Yasmeen Bano
(in C.A.656/2011)

Munawar Ali
(in C.A.657/2011)

Mst. Tahira Bano
(in C.A.658/2011)

Ghulam Muhammad
(in C.A.659/2011)

...Respondent(s)

For the appellant(s): Mr. Riaz Hussain Azam, ASC
a/w Mansoor Akhtar, Chief Legal

For the respondent(s): Mr. M. Saleem Thepdawala, ASC
(in C.A. 656-657/2011)

Date of Hearing: 24.02.2020

ORDER

UMAR ATA BANDIAL, J. The point in issue is whether the limitation period prescribed for the exercise of revisional power by the Commissioner under Section 25(2) of the Wealth Tax Act, 1963 (“**Act**”) can be ascribed the limitation period laid down in Section 25(1) of the Act

which also provides for the exercise of revisional power by the Commissioner but under different conditions. The learned High Court has answered the foregoing proposition in the affirmative. On that basis the order of the Appellate Tribunal dated 16.10.1990 has been set aside.

2. The facts of the case pertain to the assessment year 1986-87. The initial assessment order was rectified by the Taxing Officer on 30.06.1987 upon the filing of a revised Return by the respondent-assessee. The liability of the respondent-assessee was thereby reduced. In exercise of *Suo Moto* power the Commissioner revised that assessment vide his order dated 29.03.1990 whereby the original assessment order was restored. The learned Tribunal, without citing any legal authority, held that the applicable limitation period for the Commissioner to do so was two years under Section 25(2) of the Act but did not interfere with the order dated 29-03-1990 passed by the Commissioner.

3. We have carefully considered the pleas of the learned counsel on the question: whether in the absence of a limitation period being prescribed under Section 25(2) of the Act, the said omission can be supplied with reference to the limitation period under Section 25(1) of the Act. At this stage it would be appropriate to reproduce

the provisions of Section 25(1) and Section 25(2) of the Act.

“25. Powers of Commissioner to revise orders of subordinate authorities.— (1) The Commissioner may, either of his own motion or on application made by an assessee in this behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such inquiry, or cause such inquiry to be made and, subject to the provisions of this Act, pass such order thereon, not being an order prejudicial to the assessee, as the Commissioner thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section in any case—

- (a) ...
- (b) ...
- (c) ...
- (d) where the order is sought to be revised by the Commissioner of his own motion, if such order is made more than one year previously.

(2) Without prejudice to the provisions contained in sub-section (1), the Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by a Wealth Tax Officer is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the assessee an opportunity of being heard, and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment.”

4. It may be noticed that Section 25(1) *ibid* provides a revisional remedy to the assessee for obtaining an order that is not prejudicial to his interest. The prescribed limitation period for invoking this remedy is one year. On the other hand, Section 25(2) *ibid* confers a *Suo Moto* power on the Commissioner to revise orders in

the interest of the revenue for which no limitation period is prescribed. The learned High Court has compared the two provisions of Section 25 and has read into the law by interpreting its sub Sections (1) and (2) to be identical in their effect. As a result, it has been held that the limitation governing the Suo Moto exercise of revisional power by the Commissioner under Section 25(2) of the Act is also one year.

5. We have perused the entire Act but have found no limitation period for Section 25(2) *ibid*. It is trite law that when a statute is silent about limitation, a reasonable time limit is to be supplied by the Courts. In carrying out this exercise, ‘no general standards can be set out, and such time is and shall be dependant again on the purpose of the law to be achieved by an act or function to be performed’ [ref: **Federal Land Commission through Chairman Vs. Rais Habib Ahmed and others** (PLD 2011 SC 842 at paragraph 11)]. In our considered view, the purpose of Section 25(2) is to protect the interest of the revenue and to prevent wealth from escaping assessment. This same purpose is also served by two other sections in the Act: 17 and 17B. The former provides for the exercise of Suo Moto re-assessment power by the Deputy Commissioner to prevent wealth from escaping assessment, and the latter provides for the exercise of Suo Moto revisional power by the Inspecting Additional

Commissioner to protect the interest of the revenue. The limitation period for Section 17 was amended in 1981 by Section 17A. For facility of reference, Sections 17A and 17 are produced below:

17A. Time limit for competition of assessment and re-assessment.- (1) ...

(2) No order of assessment or re-assessment shall be made under section 17.-

(a) where any proceeding for an assessment or re-assessment is pending on the first day of July, 1981, at any time after the expiration of period of four years commencing on and from that date; or

(b) ...

(c) ...

(3) ...

(4) ...

“17B. Powers of Inspecting Additional Commissioner to revise Deputy Commissioner’s order.-(1) The Inspecting Additional Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by a Wealth Tax Officer is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the assessee an opportunity of being heard and after making, or causing to be made, such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment to be made.

(2) ...

(3) No order under sub-section (1) shall be made after the expiry of four years from the date of the order sought to be revised.”

6. It can be noticed that the prescribed limitation period under both the sections is four years from the date of assessment. While both provisions are evidence that re-assessment and revisional power exercised to protect the interest of the revenue shall be governed by a liberal limitation period i.e. four years, it is Section 17B that is particularly relevant to the facts of the present case. Section 17B is almost a verbatim copy of Section 25(2). In fact, Section 25(2) was only omitted from the Act in 1992 after Section 17B was inserted into the Act by Finance Act 1992. Section 17B is then the successor to Section 25(2). Therefore, it is only logical that the limitation period governing Section 17B should also govern Section 25(2). Any finding to the contrary will go against the spirit of this revisional power protecting the interest of the revenue, the purpose of which was to ensure that no taxable wealth escaped assessment. Similarly, to hold that the limitation period in Section 25(2) should be governed by the limitation period in Section 25(1) will be an incorrect conclusion because the two provisions have different purposes. The former protects the interests of the revenue whereas the latter protects the interests of the assessee.

7. Clearly then, the revisional power under Section 25(2) of the Act is to be exercised within four years from the date of assessment. In the present case, the date of assessment is 30.06.1987. Consequently, the revisional

order passed by the Commissioner on 29.03.1990 is within time. Accordingly, the judgments given by the learned Tribunal and the learned High Court are in error. They are set aside. The order of the Commissioner dated 29.03.1990 is restored. Consequently these appeals are allowed.

Judge

Judge

Judge

Islamabad
24.2.2020
Meher LC

APPROVED FOR REPORTING.