

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITIONS NO.569-K AND 570-K/2016

(Against the judgment dated 13.06.2016 of the High Court of Sindh, Karachi passed in ITRA No.190/2012, Constitutional Petition No.D-2302/2011)

Commissioner Inland Revenue	In C.P. 569-K/2016
FBR through Commissioner Inland Revenue	In C.P. 570-K/2016
	...Petitioner(s)

VERSUS

M/s ICI Pakistan	In C.P. 569-K/2016
M/s ICI Pakistan	In C.P. 570-K/2016
	...Respondent(s)

For the petitioner(s): Mr. Muhammad Sarfaraz Metlo, ASC

For the respondent(s): Dr. Muhammad Farogh Naseem, ASC
Mr. Mahmood A. Sheikh, AOR

Date of hearing: 13.03.2017

...
ORDER

MIAN SAQIB NISAR, CJ.- The respondent company

filed its tax returns for the year 2001-02 and the assessment was finalized under Section 62 of the Income Tax Ordinance, 1979 (*the Ordinance, 1979*) by an order dated 29.05.2002. On 30.12.2004, the Department issued a notice under Section 122(5A) of the Income Tax Ordinance, 2001 (*the Ordinance, 2001*) to the respondent seeking to amend the assessment order dated 29.5.2002. The respondent replied to this subsequent notice on 8.3.2005. However the Department took no further action upon the notice dated 30.12.2004 which was subsequently withdrawn. Finally, on 07.05.2007, a notice under Section 122(5A) of the Ordinance, 2001 was issued by the Department stating therein that the date of de-merger was not properly appreciated by the assessing officer and

thus the assessment order passed on 29.05.2002 is erroneous and prejudicial to the interest of the Revenue. This notice was challenged by the respondents through Writ Petition No.1094/2007 and during the pendency thereof, an assessment order was passed pursuant to the notice dated 07.05.2007. This writ petition was allowed by the Division Bench of the learned High Court of Sindh on 30.05.2007 setting aside the notice dated 07.05.2007 and the assessment order passed pursuant thereto. Civil Appeal No.1598/2007 initiated by the Department was dismissed by this Court *vide* order dated 29.10.2009 by relying upon the judgment reported as **Commissioner of Income Tax Vs. Eli Lilly Pakistan (Pvt) Ltd. (2009 SCMR 1279)**. There was a lull for a considerable period when on 20.06.2011 the Department issued another notice to the respondents under Section 66 read with Section 66-A of the Ordinance, 1979 intending to amend the notice dated 29.5.2002. Aggrieved of this notice, the respondent filed Constitutional Petition No.2302/2011 before the learned High Court of Sindh which, by considering the law laid down in the judgments reported as **Honda Shahrah-e-Faisal Association of Persons, Karachi Vs. Regional Commissioner of Income Tax, Karachi (2005 PTD 1316)**, **Eli Lilly's case (supra)** and **Commissioner Income Tax Vs. Islamic Investment Bank (2016 SCMR 816)**, came to the conclusion that the period of limitation provided under Sections 66 and 66-A of the Ordinance, 1979 is four years and that the notice issued by the petitioners on 20.06.2011 is beyond such period.

2. Learned counsel for the petitioners submits that the said notice was in fact issued under Section 65 of the Ordinance,

1979 and by relying upon Eli Lilly's case (*supra*) it is argued that the period of limitation has been provided in Section 65 of the Ordinance, 1979 which is five years and the notice issued on 07.05.2007 is within that period. Suffice it to say that after considering the notice dated 07.05.2007 purportedly issued under the provisions of Section 122(5A) of the Ordinance, 2001, we find that it is akin to the notice/proceedings which the Department would initiate in terms of Sections 66 and 66-A of the Ordinance, 1979 as the said notice was issued on the ground that the assessment order dated 29.05.2002 was erroneous and prejudicial to the interest of the Revenue, the period of limitation for which is four years. We are not persuaded to hold that the notice was issued under Section 65 of the repealed law as the notice dated 07.05.2007 was not issued on the basis of some definite information. Even this is not envisaged by the clear language of the notice itself. Besides, as mentioned earlier this notice was set aside by the learned High Court of Sindh *vide* order dated 30.05.2007 which order kept intact by this Court. It is to be noted that after the judgment in Eli Lilly's case (*supra*), a fresh notice was issued on 20.06.2011 which was challenged by way of a constitution petition before the learned High Court of Sindh and this was set aside *vide* impugned judgment as being issued far beyond the period of limitation. The judgment in Eli Lilly's case (*supra*) has neither provided a new cause of action to the petitioner to issue a notice afresh nor has it in any way extended the period of limitation originally prescribed for such a notice. We do not find there to be any error in such finding warranting any interference. Resultantly,

the view set out by the learned High Court is absolutely in accordance with law. Dismissed accordingly.

CHIEF JUSTICE

JUDGE

JUDGE

ISLAMABAD.
13th March, 2017.
Approved for reporting
Mudassar/★