IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE MUHAMMAD SHAFI SIDDIQUI
MR. JUSTICE MIANGUL HASSAN AURANGZEB

C.P.L.A. 2442-L/2022
(Against order dated 17.05.2022 passed by the Lahore High Court, Lahore in I.T.R. No.26603/2017.)

Commissioner Inland Revenue, Zone-V, Corporate Regional Tax Office, Lahore	...	**Petitioner**
vs		
Power Line Construction Company (Pvt.) Ltd., 39-B, G.E.C.H.S. Phase-III Model Link Road, Lahore	...	**Respondent**

For the Petitioner	:	Mr. Shaigan Ijaz, ASC (via video-link, Lahore) Dr. Ishtiaq, D.G., Law
For the Respondent	:	Mr. Qaisar Tasleem, ASC (via video-link, Lahore)
Date of Hearing	:	27.05.2025

JUDGMENT

Munib Akhtar, J.: This matter is being disposed of as an appeal; see below. It arises out of the Income Tax Ordinance, 2001 ("2001 Ordinance") and raises, in the facts and circumstances of the case, the following question of law of general application: how is the 2001 Ordinance to apply in relation to a given tax year: as it stood at the end of the said year (i.e., on June 30th) or as it stands on the first day thereafter (i.e., July 1st)?

2. The matter relates to the tax year ("TY") 2009. The respondent filed its tax return for the said year, which became a deemed assessment order under s. 120. Thereafter, a notice was issued by the concerned officer of Inland Revenue on 18.06.2015 under subsection (9) of s. 122 (read with subsections (1) and (5)

thereof) seeking to amend the deemed assessment. The respondent took the plea that the notice was beyond time. This was on the basis that subsection (2) of s. 122 applied to the respondent's case as it stood at the end of TY 2009 (i.e., on 30.06.2009). At that time, the provision was as follows:

> "(2) An assessment order shall only be amended under subsection (1) within five years after the Commissioner has issued or is treated as having issued the assessment order on the taxpayer."

3. The Commissioner (herein after referred to as the "Department") however took the position that the provision applied as it stood after being substituted by the Finance Act, 2009, which came into force on 01.07.2009 (see s.1(3) thereof). As so substituted, the subsection read (and continues to be) as follows:

> "(2) No order under sub-section (1) shall be amended by the Commissioner after the expiry 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."

(For completeness, we may note in passing that the position under subsection (4), which relates to the further amendment of an amended assessment order, was along the same lines.)

4. It will be seen that subsection (2), as substituted, allows for a more extended period within which the notice can be issued. It is common ground that if the provision applied as contended by the respondent then the notice was indeed hit by limitation, but if the Department's position was correct then the notice was timely issued. This then is the point of contention between the parties.

5. The learned Appellate Tribunal, on an appeal filed by the respondent agreed with the latter. The Department took the matter to the High Court in tax reference where, by means of the impugned judgment, a learned Division Bench affirmed. Relying on the High Court's own earlier decision reported as *Commissioner Inland Revenue v Major General Retd. Dr. C. M. Anwar etc* PTCL 2014 CL 608 and the order of this Court dismissing the Department's leave petition against the same (being CP 1306/2014

dismissed by order dated 03.09.2014), it was held that a vested right had accrued in favor of the respondent to have s. 122(2) applied to the facts and circumstances of the case as it stood on the last day of the tax year (30.06.2009). The amendment thereafter could not displace the vested right. The tax reference was accordingly dismissed and the Department is now before this Court.

6. Before us learned counsel for the Department submitted that the learned High Court had erred materially in its appreciation of the legal position. Subsection (2) of s. 122 applied as it stood on the day on which the notice was issued (18.06.2015), which meant that it applied as substituted by the Finance Act, 2009. The notice was timely issued and could not be avoided on the basis of limitation. Learned counsel for the respondent submitted that the impugned judgment had rightly applied the law to the facts and circumstances of the case. The vested right accruing in favor of the respondent could not be nullified by the subsequent substitution.

7. We have heard learned counsel and considered the statutory provisions and the case law. The question now before the Court has been agitated on many occasions before the courts in different forms, arising out of varied fact-situations. However, the essence of the dispute remains the same: for a given tax year, does the 2001 Ordinance apply as it stood on the last day of the year (June 30th) or the first day thereafter (July 1st). Now the "normal tax year", as defined in s. 74 (and which applies to TY 2009) in fact coincides with the financial year, which runs from July 1st in one calendar year to June 30th in the next. (The financial year is defined in such terms by s. 3(19) of the General Clauses Act, 1897.) The annual Finance Act, whereby invariably each year many amendments are made in fiscal laws including the 2001 Ordinance, typically (though not always) comes into force from the beginning of the financial year, i.e., July 1st. Thus, the question now before the Court can be restated as follows: for any given tax year does the 2001 Ordinance apply as it stood at the end of that year or as amended on July 1st by the Finance Act of that year, which is the beginning of the next financial year?

8. The context in which this question is agitated is invariably the taxpayers' claim that the provision(s) in play apply in the unamended form since, so it is contended, they have a vested right in this regard or that such application constitutes a past and closed transaction. The claim is that to apply the provisions as amended by the Finance Act would be to give the changes "retrospective" effect. The Department, on the other hand, inevitably counters that such is not the case and that the statute applies as amended. It should be remembered that the amendments in question are rarely expressly given retrospective effect. They are just what they state to be: changes in the statute coming into force on the given date which is invariably (though by no means always) the first of July of the relevant financial year. The Department's claim is always that it is simply the statute as so amended that applies to the just ended tax year. The taxpayers, on the other hand, resist the impugned amendments on the ground that if so then the amendments are in effect being applied retrospectively, thereby trenching upon rights claimed to be vested or transactions that are past and closed, as the case may be. Indeed, as noted above, the question was framed and decided in the matter at hand in precisely such terms. The Finance Act, 2009 did not itself give retrospective effect to the substitution of s. 122(2), which simply came into force on 01.07.2009. Yet, its application was resisted on the ground that to apply it to the respondent's case would be to give it retrospective effect. As noted, the forums below accepted that the respondent had an undefeatable vested right for s.122(2) to apply as it stood on the last day of TY 2009.

9. It should be noted for completeness that sometimes the question, though in essence remaining the same, is cast in inverse form. That is, the taxpayers (if it suits their purpose) contend that the 2001 Ordinance applies as amended so that the change(s) being relied upon ought to be given what would be retrospective effect. The context here is that it is usually claimed in such a situation that the change is "beneficial" in nature and hence so applies. The Department in such cases of course contends that the

amendment cannot or does not have such application. However, the essential question remains as postulated.

10. When the question is cast in this frame it requires the courts, in litigation that can cumulatively last several years before the High Courts and this Court, to consider and decide complex and vexed questions as to what are (or are not) vested rights or past and closed transactions in the facts and circumstances of the case (or what is, or is not, beneficial legislation). Delicate distinctions are inevitably drawn and the provisions involved end up, more often than not, being parsed into ever more refined and elaborate interpretations. While no one who has any familiarity with fiscal statutes will deny that this branch of the law requires intense legal scrutiny, and often approaches to legal reasoning that may well be somewhat difficult and even alien for those (including lawyers) who are not well versed or experienced in the field, a point can, respectfully, be reached when it can legitimately be asked whether the “gains” (in terms of determining the “correct” conclusion of what is, or is not, in law a vested right or past or closed transaction or beneficial legislation) outweigh the “costs” (in terms of time spent and effort expended in seemingly endless litigation). It may well therefore be fruitful to take a step back and take another look at the whole issue from a different perspective. It is in this spirit that we approach the question at hand.

11. In our view, respectfully, the time is perhaps ripe to look at something that lies at the root of the issue: from whence came the conclusion that income tax law is to apply as it stands on the first day after the day on which ends the year the income of which is to be taxed? For, pared to its most essential form, that is the question before the Court. This question can only be properly answered by, and addressed in the context of, a historical and comparative analysis of the 2001 Ordinance and the predecessor income tax statutes.

12. The levy of income tax in the sub-continent, after the assumption of direct rule by the British Crown pursuant to the Proclamation of 1858, has a long and fascinating history. By way of background that history may be briefly alluded to by

highlighting some of the principal legislation, there being a great number of statutes—usually of short duration—that were enacted from time to time relating to income tax. The first enactment came as early as 1860. That statute and a mass of legislation that followed were replaced by an Act of 1886 which, interestingly, as its long title attested, was “[a]n Act for imposing a tax on income derived from sources other than agriculture”. This statute was perhaps the genesis for the division that eventually crystallized in a constitutional rule when federalism was introduced by means of the Government of India Act, 1935, of excluding the legislative competence of tax on agricultural income from the Centre’s (or Federation’s or Union’s) domain—a division that has been maintained both in Pakistan and India after Independence. The Act of 1886 (along with much intervening legislation) was ultimately repealed and replaced by the short-lived Income Tax Act, 1918, which in turn gave way to the Income Tax Act, 1922 (“1922 Act”). It is with this statute that the analysis must begin. This law remained on the statute book up to Partition and in India till 1961 when it was replaced by the Income Tax Act of that year (“1961 Indian Act”). (This law is still in the field though apparently scheduled to be replaced (from 01.04.2026) by fresh legislation, the Income Tax Act, 2025.) In Pakistan the 1922 Act lasted a couple of decades more, till the Income Tax Ordinance, 1979. Thus, the 1922 Act has had a long life and, as will be seen, has left an enduring mark on tax jurisprudence, particularly in the context of the question at hand.

13. One point may be made here. The General Clauses Act, 1897 had, when enacted, provided that “financial year” meant the “year commencing on the first day of April” (a definition, in fact, to be found also in a preceding Act, of 1887, relating to general clauses). Both at the time of the enactment of the 1922 Act and at all times prior to Partition this was the definition: a financial year began on April 1st in a calendar year and ended on 31st March in the next. This continues to be the position in India. It was also initially the position in Pakistan and it was only in 1959 that the definition was altered to become that which has applied ever since, i.e., that a

financial year commences on July 1st in a calendar year and ends on June 30th in the next.

14. Before proceeding to consider the 1922 Act itself it is necessary to set out a basic principle of income tax law, which is deeply rooted in the jurisprudence of this area and which has been uniformly applied across the decades to all the statutes, including the present one. The importance of this for present purposes will emerge later in the judgment.

15. As is well known income tax is a levy that is annual in nature, i.e., the tax is imposed on the income of a specified twelve month period. Income tax statutes are therefore, in a fundamental sense, annual in their structure, form and application and this has been the position throughout even though there have been certain departures from this basic principle. As a result, it is fundamental to income tax law that each specified (annual) period for which the tax is levied is a separate “unit”. This principle was recognized early on in the life of the 1922 Act by the Privy Council in the leading case of *Commissioner of Income Tax v Chitnavis* AIR 1932 PC 178, 6 ITC 453, [1932] UKPC 33, where it was held as follows (emphasis supplied):

> “What are chargeable to income tax in respect of a business are the profits and gains of a year… *For the purpose of computing yearly profits and gains, each year is a separate self-contained period of time*, in regard to which profits earned or losses sustained before its commencement are irrelevant.” (pp. 180-81)

This deeply embedded principle has been stated and applied innumerable times, of which a recent example is the judgment of this Court reported as *Fawad Ahmed Mukhtar v Commissioner Inland Revenue* 2022 SCMR 426 (at para 12). With this in mind we now turn to look at the 1922 Act.

16. The yearly period the income of which was liable to tax was referred to in this statute as the “previous year”. This term was defined in s. 2(11) of the Act. Shorn to its essence (and as relevant for present purposes), it provided (when the statute was enacted and up to Partition) that “previous year” meant “the twelve months

ending on the 31st day of March next preceding the year for which the assessment is to be made". It was the income of this period that was to be brought to tax, annually in (as noted above) separate, successive, self contained periods. In effect the period so liable to tax coincided with the financial year immediately prior to the year for which the assessment was to be made. (This was the basic position. Certain departures from it, provided for in the statute, are not relevant for purposes of addressing the question at hand.) In India, this remained the position up to 1961 when the present statute was enacted. As will be seen shortly, since the financial year in India continues to be from April 1st to March 31st this position is retained in the 1961 Indian Act. In Pakistan this was also the position up to 1959 when the definition of financial year was altered so that the definition of "previous year" then became "the twelve months ending on the thirtieth day of June next preceding the year for which the assessment is to be made". The essential point however remained the same: the year the income of which was to be brought to tax was the "previous year" which, in essence, coincided with the financial year, howsoever defined.

17. The manner in which the income of a previous year was brought to tax was given in s. 3, the charging section, and the manner in which it was set out in the 1922 Act is absolutely crucial for properly addressing the question at hand. Again, to set it out as it stood up to Partition (to the extent presently relevant):

> "**3. Charge of income-tax**.-Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year..."

A striking feature (at least from a present day perspective) was that the 1922 Act itself did not contain the rate or rates at which the income of the previous year was to be charged. Those rates were to be "supplied" by (i.e., set out in) some other Act which was, inevitably and invariably, the annual Finance Act (and, for convenience, is herein after so referred). Secondly, while it was the income of a previous year that was to be taxed, the charge itself was for the year for which the rates were to be set by the Finance Act. Thus, the income liable to tax was subject to two aspects which were "external" to the period the income of which (i.e., the previous year) was being taxed. One aspect was "external" to the 1922 Act itself, being that other Act of the legislature which set out the rates of income tax. The second "external" aspect was the "year" for which that income was to be assessed and charged. That year too was a period outside of the previous year being, as will be seen in a moment, in essence the financial year immediately next following.

18. Quite how these aspects came and worked together was explained by the Privy Council in the leading and fundamentally important case of *Maharajah of Pithapuram v Commissioner of Income Tax* AIR 1945 PC 89, 13 ITR 221, 72 IA 241, [1945] UKPC 10 (herein after "the Privy Council decision"). The facts were as follows. The previous year for which the dispute arose was 1938-39, i.e., the year from 01.04.1938 to 31.03.1939. During this period certain amounts that the Maharajah had settled on his daughters did not amount to income in terms of the 1922 Act as it stood during these two dates. Now, the said Act was amended by Indian Income-tax (Amendment) Act, 1939, which came into force on 01.04.1939, i.e., on the day immediately after the end of the previous year 1938-39. As so amended, the amounts settled by the Maharaja became income. April 1st 1939 was the first day of the "year" next succeeding the previous year (i.e., 1938-39) the income of which was to be assessed and brought to tax. This was so because the Indian Finance Act, 1939 set out the rates of income tax applicable to that previous year in its s. 6 which provided, as presently relevant, that "income-tax for the year beginning on the 1st day of April 1939, shall be charged at the rates specified" in the relevant schedule thereto. And of course April 1st 1939 was also, by definition, the first day of the next financial year, 1939-40. Now the dispute arose because if the 1922 Act applied (as contended on behalf of the Maharajah) as it stood during and up to the end of the previous year 1938-39 then the amounts were not liable to tax. However, if the Act applied (as contended by the Department) as it stood on the first day of the immediately succeeding "year" (i.e., as

on 01.04.1939), which was also the date on which it stood amended by the amending Act, then the amounts were liable to tax. Hence the question: how did the 1922 Act apply? As will be immediately apparent, the form of the question was substantively of the nature that is now before the Court. Indeed, the manner in which it was answered by the Privy Council can, in a very real sense, be regarded as its genesis.

19. The Madras High Court agreed with the Department that the 1922 Act applied as it stood on 01.04.1939 and hence inclusive of the amendments made thereto by the amending Act. The amounts involved were therefore liable to tax. On the Maharajah's appeal the Privy Council affirmed, dismissing the appeal. The position was explained in the following terms (emphasis supplied; AIR at pp. 90-91):

> "Before dealing with the particular grounds of appeal, their Lordships consider it desirable to make some general observations as to Indian income-tax law, which may clear away a certain confusion of thought which would appear to affect certain of the contentions in the present case. *In the first place, it is clear to their Lordships that under the express terms of S. 3, Indian Income Tax Act, 1922, the subject of charge is not the income of the year of assessment, but the income of the previous year*. This is in direct contrast to the English Income-tax Acts, under which the subject of assessment is the income of the year of assessment, though the amount is measured by a yardstick based on previous years....
>
> *In the second place, it should be remembered that the Indian Income-tax Act, 1922, as amended from time to time, forms a code, which has no operative effect except so far as it is rendered applicable for the recovery of tax imposed for a particular fiscal year by a Finance Act. This may be illustrated by pointing out that there was no charge on the 1938-39 income either of the appellant or his daughters, nor assessment of such income, until the passing of the Indian Finance Act of 1939, which imposed the tax for 1939-40 on the 1938-39 income and authorised the present assessment*. By sub-s. (1) of S. 6, Finance Act, 1939, income tax for the year beginning on 1st April, 1939, is directed to be charged at the rates specified in Part I of Sch. 2, and rates of super-tax are also provided for, and by sub-s. (3) it is provided that:
>
> ''for the purpose of this section and of Schedule 2, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may

> be, in accordance with the provisions of the Indian Income-tax Act, 1922".
>
> *This can only refer to the Income-tax Act, 1922, as it stood amended at the date of the Finance Act, 1939, and necessarily includes the alterations made by the Amending Act, which had already come into force on the 1st April 1939*."

20. The passages extracted above form the core of how the 1922 Act came to be understood as regards the application of the charging section. It will be seen that it dealt with both of the "external" aspects noted above and how they interacted. Firstly, and most fundamentally, the Privy Council held that the 1922 Act though always in force was not always in effect. Rather, in relation to each previous year it came into effect if, and only if, in respect of that previous year the rates of tax were set by some other Act of the legislature, i.e., the Finance Act. Of course as a matter of fact there was always an annual Finance Act which set the rates. Indeed, the language used in such statutes was virtually formulaic (and remained so throughout the period the 1922 Act was in force, both here and in India): 'income-tax for the year beginning on the 1st day of April ____, shall be charged at the rates specified' in the relevant schedule thereto. (For Pakistan, after 1959 it of course became the first day of July.) However, *in principle*, if there was no Finance Act setting the rates of tax for a particular previous year, then the 1922 Act never came into effect *for that year*. Put differently, *in relation to each previous year, and during the course thereof, the 1922 Act remained dormant and without effect*. It took effect if and only if, *and upon*, the coming into force of the rates set by a Finance Act. No Finance Act, no income tax: *in and of itself (i.e., merely by virtue of its own existence) the 1922 Act simply did not apply*. And the Finance Act had not merely to set the rates; it had to specify the "year" for which those rates were to apply. Since the definition of a previous year was that it was the twelve month period ending on March 31st (or, as it later became in Pakistan, June 30th) immediately prior to the year of assessment, that meant that the rates had to be set for the "year" commencing on the day immediately after the previous year, i.e., April 1st (or, as the case may be, July 1st). This then was how the two "external" aspects interacted: in each (calendar) year there had to be an Act

specifying the rates of tax to apply from the 1st of April (July) for there to be any charge (i.e., levy) at all on the income of the just ended previous year (31st March or 30th June). But of course these dates coincided with the respective financial years. Thus, for there to be at all the levy of tax for a particular previous (financial) year, there had to be a Finance Act coming into force and setting the rates on the first day of, and for, the immediately following financial year.

21. From the foregoing followed the most essential point. Since the 1922 Act applied to each previous year only if and when brought into effect by a Finance Act, *it applied in relation to that previous year as it stood on the day that the Finance Act brought it into effect*. This meant that if the 1922 Act was amended *even on that day* those amendments applied to the previous year. And since the Act was always brought into force on the first day immediately after the end of the previous year, this meant that it applied as it so stood, inclusive of all amendments made up to (and including) that day. That day was of course the first of April (or July in Pakistan after 1959). Hence the rule: the 1922 Act applied to a previous year *not* as it stood on the last day of that year (March 31st or June 30th) but rather as it stood on the first day thereafter. And if perchance the Act was amended even on that very day those amendments applied to the previous year. Therefore, the Maharajah lost and his appeal was dismissed.

22. Here we must also consider an important judgment of the Bombay High Court, which applied the Privy Council decision and further explained it and affirmed the view that emerged on the basis thereof, i.e., that the 1922 Act applied to a previous year as it stood on the first day thereafter. This is the case reported as *Scindia Steam Navigation Company Ltd. v Commissioner of Income Tax* AIR 1955 Bom 230, (1954) 26 ITR 686. The facts were as follows. The 1922 Act was brought into effect for the previous year in question by the Finance Act, 1946, i.e., the assessment year was 1946-47. This meant that the Act applied as it stood on the first day thereof, i.e., 01.04.1946. Now, the 1922 Act was amended by the Indian Income-tax Act, 1946 which came into force on

04.05.1946. This was of course after the first day on which the 1922 Act became applicable to the previous year in question. The Department sought to apply the Act as amended on 04.05.1946. This was resisted by the assessee who contended that the Act applied only as it stood on the first day of the assessment year, and that therefore the subsequent amendment was irrelevant for purposes of the previous year in question. It will be seen that the facts of the case were the converse of those in the Privy Council decision. Relying thereon the Bombay High Court agreed with the assessee. After setting out the passage extracted above, the position was explained in the following terms (AIR at pg. 233, emphasis supplied):

> "… what the Privy Council says is that *not only the liability to pay tax but the authority to make the assessment order arose from the Finance Act*. The language of the Finance Act which the Privy Council was considering is identical with the Finance Act which we are considering and the Privy Council construed that language to mean that the computation of the total income in accordance with the provisions of the Indian Income-tax Act *means the Income-tax Act as it stood amended at the date of the coming into force of the Finance Act*. Now, it will be noticed that the case the Privy Council was considering was a converse case to the one which we are considering. There the assessee was seeking to escape tax on the ground that the amending Act did not apply when the income was earned. *The Privy Council rejected that contention holding that the material date was not the previous year but the first of April of the assessment year, and the liability to tax depended upon the provisions of the Indian Income-tax Act as it was in force on that date*. Here the amendment has come into force after 1-4-1946, and the attempt of the Department is to tax the assessee on his total income for the previous year, not according to the Act as it stood on 1-4-1946, but according to the Act as it was subsequently amended. *In our opinion the decision of the Privy Council is clear and emphatic and it is not open to the Department to give retrospective effect to the amending Act which only came into force on 4-5-1946*. In effect and in substance what the Department is contending for is that although the Act 8 of 1946 came into force on 4-5-1946, we should deem it to be in force on 1-4-1946. Now, this decision has been considered and applied by the Allahabad High Court in -- 'Mishrimal Gulabchand of Beawar, In re', AIR 1950 All 270. In that case the assessee, who was a resident and ordinary resident in British India, made a profit from its' business in British India and suffered a loss from its business in Indian State in the previous year relevant to the assessment year 1944-45. The question was whether the loss incurred in the Indian State should be deducted from the assessee's income from the business and

> the Allahabad High Court held that proviso 1 to S. 24(1) was not applicable to the assessment year 1944-45, because it was not in force on 1-4-1944. That proviso came into force on 12-4-1944. Therefore, the facts that the Allahabad High Court had to consider were practically identical with those which we have to consider here, and the Allahabad High Court applied the decision of the Privy Council and came to the conclusion to which reference has just been made."

We may note that an appeal against the decision of the High Court was dismissed by the Supreme Court of India in *Commissioner of Income Tax v Scindia Steam Navigation Company Ltd.* (1961) 42 ITR 589, AIR 1961 SC 1633.

23. The foregoing is thus the genesis of the rule in relation to the charging section of the 1922 Act, i.e., that the statute applied not as it stood on the last day of the previous year but rather as on the first day of the year when the statute was brought into effect by the Finance Act in relation thereto. And that was inclusive of all amendments (if any, which was more often than not the case) made to the Act up to and on the latter date. But any amendments made thereafter did not apply to the previous year in question. Or, put differently, the 1922 Act did not apply as it stood on March 31st (or June 30th) but rather as it stood on the succeeding April 1st (or July 1st).

24. This rule was applied to the 1922 Act by generations of lawyers—especially the tax bar—and judges—especially those who came to the Bench from a tax background—such that the rule became legal orthodoxy and conventional wisdom and virtually a judicial mantra. It was deeply stamped on tax jurisprudence. Year in year out, decade in decade out, as the 1922 Act ran its course so ran the rule: income tax law applied as it stood on the first day of the year of assessment, not the last day of the previous year. But it all depended on the charging section. Like life charging sections also move on and so must our analysis. We therefore move on to look at the law that replaced the 1922 Act, the Income Tax Ordinance, 1979.

25. Before turning to that statute, it will be instructive to pause and take a look at the 1961 Indian Act. This Act introduced the

term "assessment year", which had not been defined as such in the 1922 Act. This is defined in s. 2(9) as meaning "the period of twelve months commencing on the 1st day of April every year". The concept of "previous year" is retained but it is now defined, in s. 3, as meaning "the financial year immediately preceding the assessment year". Thus, what was implicit in the 1922 Act (though given full effect as a result of the Privy Council decision) is brought out with clarity in the 1961 Indian Act. Since in India the financial year continues to start from the first of April, the previous year for which income is to be taxed is, in effect, the financial year immediately preceding the next succeeding financial year, which is of course the assessment year. The charging provision, s. 4, as presently relevant is as follows:

> "**4. Charge of income-tax**.—(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person. ..."

It will be seen that the charging section, in its essence, remains the same as in the 1922 Act. As before, it has two aspects "external" to the previous year in question. Firstly, like the 1922 Act, the 1961 Indian Act while always in force has to be brought into effect for each previous year by another statute, the Finance Act of the relevant assessment year. This also, as before, identifies the assessment year, and hence the previous year relative thereto, for which the statute is being brought into effect. Secondly, as before while the income to be taxed is that of the previous year, it is to be charged in the assessment year, the other "external" aspect of the charging section. Given the very close identity between the charging sections of the two statutes, it should come as no surprise that the Indian courts have repeatedly held that the rule laid down by the Privy Council decision applies equally in relation to the 1961 Indian Act. In other words, the statute is to apply in relation to a previous year not as it stood on the last day of that year but as on the first day of the assessment year relevant thereto, inclusive of any amendments made in the statute up to, and as on, that day. Reference in this regard may be made to the 11th edition (2020) of the leading treatise on income tax law, *Kanga & Palkhivala's The Law and Practice of Income Tax*, Vol. 1, pg. 219.

26. Interestingly, both the 1922 Act and the 1961 Indian Act contain a provision of dealing with the (presumably rare) contingency of what would happen if, in fact, the Finance Act is not passed by the first of April in a given year. In the 1922 Act, this provision was added as s. 67B in 1940. It of course continued to be part of the statute as in force in Pakistan after Partition. In India this became s. 294 of the present statute. Section 67B (as it stood up to Partition) had provided as follows:

> "**67B. Act to have effect pending legislative provision for charge of income-tax.**—If on the 1st day of April in any year provision has not yet been made by an Act of the Indian Legislature for the charging of income-tax for that year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before the Legislature, whichever is more favourable to the assessee, were actually in force."

This provision, in which in Pakistan the "1st day of April" became from 1959 onwards "the first day of July", serves only to underscore the rule laid down in the Privy Council decision and the manner in which the charging section took effect in the 1922 Act and continues to operate in the 1961 Indian Act.

27. This brings us to the Income Tax Ordinance, 1979 ("1979 Ordinance"). The year the income of which was to be brought to tax (i.e., the equivalent of the "previous year") was defined as the "income year". "Assessment year" was also a defined term. Since the two terms interlocked the definitions, contained in s. 2, need to be looked at together. As presently relevant, they provided as follows:

> "(8) "assessment year" means the period of twelve months beginning on the first day of July next following the income year…;"

> "(26) "income year", in relation to any assessment year … means- (a) the financial year next preceding the said assessment year …;"

It will be seen that the definitions were essentially of the same nature as related to "previous year" under the 1922 Act. An income year took meaning in relation to the corresponding assessment year and vice versa. Income year was specifically defined in terms of a financial year and, since it was to be charged for the next following twelve months starting with the first of July, the assessment year was the next following financial year. (There were of course complexities in relation to both definitions but for purposes of addressing the question before us it suffices to look at the essence of the matter.)

28. What of the charging provision? This was s. 9, subsection (1) of which provided when enacted (i.e., absent a subsequently added proviso which will be considered later) as follows:

> "**9. Charge of income tax**.- (1) Subject to the provisions of this Ordinance, there shall be charged, levied and paid for each assessment year commencing on or after the first day of July, 1979, income tax in respect of the total income of the income year or years, as the case may be, of every person at the rate or rates specified in the First Schedule. ..."

As will be seen at once there was a fundamental difference between this provision and s. 3 of the 1922 Act. The rates of tax were set out in a Schedule to the 1979 Ordinance itself. They were not dependent on any "external" source, i.e., another statute which set them out. *It follows that unlike the 1922 Act the 1979 Ordinance was not merely always in force, it was also always in effect*. Thus, the fundamental basis and premise on which the Privy Council decision had proceeded had been removed from the charging section. For the rates of an assessment year to apply to the corresponding income year no other legislation was required or need be waited for. As soon as the income year ended and time slid into the succeeding assessment year, the rates set out in the First Schedule became immediately applicable. Of course, these rates could, and indeed invariably were, amended by the Finance Act of the year. But that was not of the essence of the matter. Even without any such Finance Act, the 1979 Ordinance applied on its own force and remained in effect by virtue of its own existence. Indeed, in principle even if the statute had not been amended at all, ever, it would still have gone on applying and levying income tax on each income/assessment year "combination", each such pairing endlessly succeeding one after the other, quite literally without more. This was a sea change in the application of income tax law from the situation that had obtained under the preceding legislation. The first "external" aspect in relation to the year the income of which was to be brought to tax had simply ceased to exist.

29. How did this impact the application of the statute, i.e., did it apply as it stood on the last day of the income year or as on the first day of the succeeding assessment year, inclusive of all amendments as came into force on the latter day? It was at least arguable that under the fundamentally altered charging provision, it was the first situation that applied. Since in relation to each income year, and during the course thereof, the 1979 Ordinance remained both in force and effect it could be said that it applied as it stood at the end thereof, i.e., on the last day of the income year. However, the second "external" aspect noted in relation to the charging provision of the 1922 Act still applied. Section 9 provided that income tax be "charged, levied and paid for each assessment year" on the income of the corresponding income year. (It will be recalled that the two definitions were interlocking.) On this basis, since the "referent", for each income year, for the levy of the tax thereon remained a period "external" to it, i.e., the corresponding assessment year, it was arguable that the 1979 Ordinance applied as it stood on the first day of the latter and not as on the last day of the former. And if this was the position, then it necessarily applied inclusive of all amendments made to the statute and in force on the first day of the applicable assessment year.

30. It will be seen that the 1979 Ordinance in a sense represented an intermediate position as compared to the 1922 Act. One aspect of its charging section pulled in one direction, inasmuch as the requirement of an "external" source bringing it periodically (i.e., annually in relation to each previous year) into effect had ceased to exist. However, the other aspect, keeping as before a period (i.e., the corresponding assessment year) "external"

to the period the income of which was to be taxed (i.e., the income year) the referent for the levy of the charge pulled in the other direction. There was, in other words, a certain ambiguity. It is interesting to note that by the Finance Act, 1991, a proviso was added to subsection (1) of s. 9. The said Finance Act provided that the proviso was deemed always to have been so added. The proviso was as follows:

> "Provided that where, by virtue of an amendment in the First Schedule, the rate of income tax, for the purpose of assessment in respect of any assessment year, is altered, the rate of income tax existing prior to the said alteration shall continue to apply in respect of any assessment year to which the said existing rate is applicable."

The wording of the proviso, with respect, was not a model of clarity. However, when considered from the perspective of the question now under consideration it seemed to indicate that the rates of tax set out in the First Schedule would, in relation to an assessment year, apply as amended (if such be the case) by the Finance Act relevant thereto. Since the definitions of both income year and assessment year interlocked and were tied to the concept of a financial year which (by definition) started on the first of July, that meant that in relation to a just ended income year the rates for the assessment year applied not as they stood at the end (i.e., last day) of the income year but rather as provided by the amended Schedule, which was to apply on the first day of the corresponding assessment year. Since this was the situation with the all-important charging section, from this it could (at least arguably) be extrapolated that in relation to its other provisions also the 1979 Ordinance applied not as it stood on the last day of the income year concerned but rather on the first day of the corresponding assessment year. That would be inclusive of all amendments up to, and on, the latter date. Nonetheless the position was by no means as clear as could have been; the interpretative analysis tugged in both directions.

31. However it is not necessary to resolve the position since the 1979 Ordinance has long since been repealed and replaced. It suffices to note that it did bring about a fundamental change in the charging section as compared to the 1922 Act in one aspect

“external” to the year the income of which was to be taxed, i.e., the coming into effect of the statute in relation thereto. This aspect had ceased to exist. However, the other aspect “external” to the said year remained in place, i.e., that the levy was to be charged with reference to another period, the assessment year. With this in mind, we move on to the 2001 Ordinance.

32. The charging provision for this statute is s. 4 (with which its Chapter II begins), and the basic charge is set out in subsection (1). The position is somewhat complicated by the fact that subsection (4) of this section inter alia provides that “certain classes of income (including the income of certain classes of persons) may be subject to... separate taxation as provided under this chapter”. Chapter II then goes on to list various such classes of income, some of which constitute separate “blocks” of income (i.e., income carved out of what would otherwise have been included in total/taxable income generally defined) and others being amounts entirely newly defined as “income” (herein after referred to “specially designated” income). An example of the former is s. 5 which relates to taxation of dividends. This is regarded as a separate “block” of income which, absent s. 4(4), would simply have been part of total/taxable income generally defined. An example of the latter is s. 7E which creates a special species of deemed income that would, absent this provision, not be regarded as part of total/taxable income generally defined. Section 8 (the last section of Chapter II) makes certain general provisions for these types of income. However, the categories of income referred to in s. 4(4) are not relevant for addressing the question at hand. Therefore, for analytical purposes we focus on the general charge as contained in subsection (1) of s. 4.

33. This provision, as it stands at present, is in the following terms:

> “**4. Tax on taxable income**.— (1) Subject to this Ordinance, income tax shall be imposed for each tax year, at the rate or rates specified in Division I or II of Part I of the First Schedule, as the case may be, on every person who has taxable income for the year.”

It will be seen that like the 1979 Ordinance (and unlike the 1922 Act) the 2001 Ordinance does not require any other statute to bring it into effect. The rates of tax are set out in a Schedule to the statute itself. The law therefore is always both in force and in effect. Thus, the first "external" aspect which was the essential driver of how the 1922 Act came to be interpreted and applied, as laid down in the Privy Council decision, remains entirely absent. The fundamental change brought about by the 1979 Ordinance in this regard is just as much applicable to the present statute. Therefore, the analysis in the paras herein above of how the absence of the first "external" aspect affects the position of the charging section is, mutatis mutandis, applicable here and need not be repeated.

34. The real difference between the 1979 and 2001 Ordinances lies in respect of the second "external" aspect. It will be recalled that in the former statute the referent for the charging of income tax on the year that was being brought to tax (i.e., the income year) was the assessment year, which was a period other than (i.e., "external" to) the former. This was in line with the position that had obtained in the 1922 Act. The question therefore is, whether the same situation is to be found in the 2001 Ordinance? The charging section "imposes" tax for each "tax year" and it therefore needs to be seen what is meant by this term.

35. Section 2(68), shorn to its essence, tells us that "tax year" has the meaning as given in subsection (1) of s. 74. This provision is as follows:

> "**74. Tax year**.— (1) For the purpose of this Ordinance and subject to this section, the tax year shall be a period of twelve months ending on the 30th day of June (hereinafter referred to as 'normal tax year') and shall, subject to sub-section (3), be denoted by the calendar year in which the said date falls."

This subsection has remained unchanged ever since the statute was brought into force, i.e., for a period of more than two decades. It will be seen that it simply provides that the tax year is a twelve month period ending on the 30th of June which, in effect, is the financial year so ending. This is the (annual) period that is successively brought to tax. Most importantly, the charging section imposes income tax *solely* with reference thereto. *Thus, unlike both the 1922 Act and the 1979 Ordinance there is no period "external" to the year sought to be taxed that is the referent of or for the charge*. There is, in other words, no "assessment" year or period outside of the tax year that has any relevance for the charging of income tax. Put differently, the second "external" aspect of the charging section, which was to be found in the 1922 Act and continued in the 1979 Ordinance, has also been omitted. *It follows that each tax year is, in this sense, now entirely self-contained*; *it is its own referent*. It not merely describes the (annual) period that is (yearly) to be brought to tax but also directly makes it the only period relevant for the levy or charge of the tax. It is thus both the "subject" and the "object" of the charge. Or, put differently, as here relevant a tax year is also its own 'assessment year'. *In other words, all aspects for the levy and the charging of the tax have been "internalized" in the tax year itself*.

36. In our view, if the logic of the reasoning of the Privy Council decision is applied to the situation that now obtains, the position is clear. For each tax year the 2001 Ordinance applies at it stands at the end of that year. Any other date, including in particular the first day next succeeding, is of no relevance for the simple reason that no such referent exists in the charging provision. The day next succeeding the last day of a tax year is now simply the first day of the next tax year. It has no meaning or relevance for the tax year that just ended. Put differently, the end of the year which is to be brought to tax does not, as it did under the predecessor statutes, slide into a "year" that had also to be taken into account since the tax was to be charged with reference to the latter. Thus, each tax year is now, in all aspects, in near complete accord and harmony with the fundamental principle of income tax law noted in para 15 above, i.e., that each such period is a self contained "unit". Under the earlier dispensations that was also the position but with the crucial caveat that the charge was in relation to a period "outside" thereof (though no doubt temporally "adjacent" thereto). That distinction has now been eliminated. Since everything is now self-contained in the tax year, which is its own referent for all purposes

of the charge, it follows that the 2001 Ordinance applies to that tax year as it stood on the last day of such period, i.e., June 30th. We note that this is in relation to the "normal tax period", which is the situation at hand in respect of the TY 2009. Section 74 also deals with what is described therein as a "special tax year". In our view, what has just been said applies equally, mutatis mutandis, in relation to a special tax year.

37. For completeness, and to avoid any confusion, we may note that there are certain dates after the tax year that may be relevant thereto. The most obvious such date is the date for the filing of the return for that year. But those are just *dates*. They are not *periods* which, under the previous charging sections, had relevance for the charge itself. Such dates are matters of administrative convenience, regulated in relevant part by rules framed under the statute. They are not in, or of, the essence of the charge. Under the 2001 Ordinance the tax year itself encapsulates all that is required in the tax year.

38. It will be seen from the foregoing that the position under the 2001 Ordinance, in relation to the question now before the Court, has, with respect, not been properly appreciated or applied. Of course, to apply the present statute in its true and correct perspective required also an understanding of the historical background and the manner in which the charging section has both legislatively evolved and been judicially interpreted. But once this is recognized, the many questions in relation to the 2001 Ordinance, of the nature described in paras 8 to 10 above, would simply cease to exist (if not wholly then at least in large measure). Indeed, in a sense the law has (almost) come full circle. Under the 1922 Act all one had to do was to ask, how did the statute stand on the first day that it was brought into effect for a given previous year? The answer was determinative of how the statute applied. Now, all that one has to ask is how does the statute stand on the last day of the tax year in question? The answer to this will likewise be determinative. No vexed questions of vested rights or past and closed transactions or beneficial legislation would arise or need to be addressed. There would be great certainty in the law.

And this would be driven, as it was under the 1922 Act, by the shape and frame of the charging section itself. The fact that things as they now stand under the present law can only be properly understood in a historical sense and by a comparative analysis should not be too surprising. That is how the law develops and evolves and changes over time especially when the span, as here, is many decades. The logic underlying the reasoning of the earlier decisions led to one conclusion when the charging section was framed in a certain way. Now that it is framed in a fundamentally different way, the same logic leads to a different conclusion in relation to the 2001 Ordinance.

39. Accordingly, in our view to address the question in the facts and circumstances of the present case one need only ask: how did s. 122(2) stand on the last day of TY 2009? It stood as set out in para 2 herein above. On that basis the respondent taxpayer was correct in asserting that the notice for amendment was time barred. It is so held. No question of any vested right arises or need be addressed.

40. While the foregoing is dispositive of the matter at hand, two points need to be made. Firstly, it should be kept in mind that the context in which the question before the Court is being considered is a retrospective application of the 2001 Ordinance and not its prospective applicability. An example will serve to illustrate the point. Suppose an exemption is granted in terms of the Second Schedule, to be available for a set number of years. Later, the exemption is withdrawn. A taxpayer who by the time of the omission had already become entitled to avail the exemption may claim a continued right to have its benefit for the (remaining) years of the grant. This claim may well be based on a vested right. But it would be in relation to the future, for tax years continuing or yet to come. Such a claim would have to be dealt with on its own terms. The question would be how, from the point of the pivot (i.e., the tax year in which the exemption is withdrawn), the 2001 Ordinance is to apply in future tax years and not for how it applied in tax years already past. That is, it would be prospective and not retrospective.

This is a context different from how the question is presently before the Court.

41. Secondly, we are cognizant that the analysis and discussion in this judgment in a sense fundamentally resets the manner in which the question before the Court is to be answered. We are also aware that the 2001 Ordinance may up to now have been regarded as applying on the first day immediately after the end of the tax year in question, i.e., on the first of July, as amended by the Finance Act of that year. This could be especially so in relation to the rates set out in the First Schedule and also in respect of the rates relating to advance payment of tax (whether by way of deduction or collection) and impositions that are regarded as "final" or "minimum" tax as well as certain special impositions on separate "blocks" of income or on "specially designated" income. The Finance Acts usually come into force on the first day of July, i.e., after the tax year in question has already ended. Furthermore, the long titles of these Acts invariably state that they are being enacted to give effect to the financial or budgetary proposals of the Federal Government for the financial year commencing on the first of July. So, something needs to be said in this respect.

42. It should be understood that if the 2001 Ordinance is amended on or before its last day (i.e., on or before June 30th) as in terms of the foregoing analysis it ought to be, that still would not affect the financial or budgetary position of the Federal Government for the ensuing financial year. The reason is that the tax, though levied on and assessed for the (just ended) tax year, is nonetheless collected in the following (financial) year. Therefore, the (expected) revenue receipts on account of the tax would not be affected. The rates amended up to 30th June for the just ended tax year would both properly "close" that year (in the legal sense described in this judgment) and also result in receipts that would be collected in, and therefore for, the ensuing financial year. As regards the rates for advance payment of tax etc., those would in any case apply in the ensuing financial year when the 2001 Ordinance would (since it is, it must be remembered, always both in force and in effect) have the shape and form as amended up to

the just closed tax year. In other words the financial or budgetary position of the Federal Government would not be affected. The same would be the position, mutatis mutandis, in relation to the levy of tax on any special “block” of income or any “specially designated” income: such income would be levied for and in relation to the tax year just ended but the collection (including collection by way of advance payment) would be in the ensuing financial year.

43. Nonetheless, notwithstanding the foregoing and in order to obviate any practical difficulties, it is declared that this judgment will not, in and of itself, apply to any tax year up to and including TY 2025 insofar as rates of tax set out in the First Schedule and rates for the advance payment of tax or “final” or “minimum” tax or the levy of tax on a special “block” of income or any “specially designated” income are concerned. However, in all other respects and aspects, this judgment will apply in relation to all past tax years, up to and including TY 2025. Furthermore, on and from TY 2026 onwards this judgment will also apply in respect of the ‘exclusions’ just identified (of course as applicable in and for and in relation to the tax years from that tax year onwards).

44. Finally, for purposes of completeness, we will also take a look at how the question now at hand, in the context of and in relation to s. 122(2), was tackled in the reasoning of the forums below. That may, for present purposes, be called the “traditional” analytical framework. As noted, the learned High Court dismissed the Department’s tax reference by relying on its own decision reported as *Commissioner Inland Revenue v Major General Retd. Dr. C. M. Anwar etc* PTCL 2014 CL 608 and the order of this Court dismissing the Department’s leave petition against the same (being CP 1306/2014 dismissed by order dated 03.09.2014). The facts in the cited decision were as follows. The tax year involved was TY 2004. The concerned officer of Inland Revenue sought to amend the taxpayer’s deemed assessment order by a show-cause notice issued on 13.05.2010. This was resisted as being time barred on the ground that at the relevant time, being the last day of TY 2004, s. 122(2) stood in the shape noted in para 2 above and hence the

notice was beyond time. The Department took the position that the provision applied as it stood on the date of the notice by when it had of course been substituted to take the form set out in para 3 herein above. As will be seen the facts of the cited decision are quite similar to those at hand. The learned High Court held (at pp. 612-3) that the change in law could not affect the vested right that had accrued to the taxpayer to have the provision applied as it stood on the last day of the tax year. Therefore, the notice was time barred. When the Department approached this Court leave to appeal was declined on a similar approach. In our view, the cited decision can certainly be regarded as relevant for the facts and circumstances of the present case and therefore, even if the matter is regarded in terms of the “traditional” analytical framework, the same conclusion would be arrived at, namely, that the show-cause notice was time barred. Thus, on any view of the matter the Department’s stand is, with respect, without merit.

45. This leave petition is converted into an appeal and the question posed is answered in terms as set out herein above. Since that answer, in the facts and circumstances of the case, is against the Department it follows that the appeal fails and is hereby dismissed.

Judge

Judge

Judge

Announced in the Court on 21/10/2025 at Islamabad.

Sd/-

Judge

Approved for reporting