

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

I.T.R.No.138 of 2015  
Commissioner Inland Revenue Zone-II, Regional Tax Office, Islamabad  
**Versus**  
Mep (Pvt.) Limited

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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18.05.2022	<b>Dr. Farhat Zafar, Advocate for the applicant</b> <b>Mr. Muhammad Afzal Noor, Advocate for the respondent</b>
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The sole question of law that was pressed and framed, vide order dated 03.03.2022, is as follows:-

*“Whether the facts and in circumstances of the case, the ATIR was justified to delete the order of the assessing officer, with such a huge Revenue Impact, on the pretext that proper opportunity of being heard was not provided to the taxpayer when the option of “Remand” was available with the higher Appellate Fora?”*

2. The respondent (Mep (Pvt.) Ltd.) derives income from human resource management and payroll management / consulting services. The respondent had filed income tax returns for the tax year 2009 under the Universal Self Assessment Scheme showing income / loss which was accepted under Section 120 of the Income Tax Ordinance, 2001 (“the 2001 Ordinance”). Subsequently, the Officer Inland Revenue (Audit-III) passed an order dated 27.07.2010 under Section 122(1) of the 2001 Ordinance holding that the commission receipts for an amount of Rs.62,974,952/- had not been offered for final taxation and therefore, sales tax at the rate of 10% was to be charged on the said amount. The net payable tax was held to be Rs.24,592,506/-.

3. The respondent preferred an appeal before the Commissioner Inland Revenue (Appeals), who vide order dated 24.06.2011, partly allowed the same. Perusal of the said appellate order shows that in the appellate proceedings, the respondent had produced

documents on the basis of which the addition of the net payable tax determined by the Officer Inland Revenue (Audit-III) was set-aside. The Department's appeal before the Appellate Tribunal Inland Revenue ("A.T.I.R.") was unsuccessful.

4. Learned counsel for the petitioner drew the attention of the Court to Section 128(5) of the 2001 Ordinance, and submitted that the said provision prevented the Commissioner Inland Revenue (Appeals) from admitting any documentary material or evidence which was not produced before the assessing officer unless Commissioner Inland Revenue (Appeals) is satisfied that the respondent was prevented by sufficient cause from producing such material or evidence before the assessing officer.

5. The order dated 24.06.2011 passed by the Commissioner Inland Revenue (Appeals) clearly shows that the respondent had produced documents in support of its appeal against the findings of the Officer Inland Revenue (Audit-III) on the question of salaries & wages and receipts falling under PTR.

6. Learned counsel for the respondent has not been able to demonstrate that the documents produced before the Commissioner Inland Revenue (Appeals) had been a part of the record of the proceedings before the Officer Inland Revenue (Audit-III). The order dated 24.06.2011 passed by the Commissioner Inland Revenue (Appeals) is also silent on whether the respondent had come up with sufficient cause so as to allow the respondent to produce documents that had not been produced before the original forum. In this view of the matter, we are of the view that the proceedings before the Commissioner Inland Revenue (Appeals) did suffer from a jurisdictional irregularity

inasmuch as the same were not compliant with the requirements of Section 128(5) of the 2001 Ordinance.

7. Under Section 122 of the 2001 Ordinance, the Commissioner has the power to amend an assessment order treated as issued under Section 120 *ibid*. Under Section 210 of the said Ordinance, the Commissioner can delegate this power to an Officer of Inland Revenue. Section 211(1) of the 2001 Ordinance provides *inter alia* that where by virtue of an order under Section 210 *ibid*, an Officer of Inland Revenue exercises a power or performs a function of the Commissioner, such power or function shall be treated as having been exercised or performed by the Commissioner. It is not disputed that the original order dated 27.07.2010 had been passed by the Officer Inland Revenue (Audit-III) in his capacity as a delegate of the Commissioner. Therefore, his order passed under Section 122 of the 2001 Ordinance shall for the purposes of Section 128(5) *ibid* to be treated as the order passed by the Commissioner.

8. It is apparent from the order dated 24.06.2011 passed by the Commissioner Inland Revenue (Appeals) that he took into consideration the documents produced by the respondent in the appellate proceedings. These documents caused the appellate forum to take a different view from the one taken by the Officer Inland Revenue (Audit-III). Entertaining fresh evidence or documents in the appellate proceedings by the Commissioner Inland Revenue (Appeals) without the party producing such evidence or documents before original forum or showing sufficient cause for not doing so is a transgression of Section 128(5) of the 2001 Ordinance.

9. Now, if the Commissioner Inland Revenue (Appeals) was of the view that the documents that the respondent had sought to rely on in the appellate

proceedings, he should have either required the respondent to come up with sufficient cause as to why these documents were not produced before the original forum or could have remanded the matter to the Officer Inland Revenue (Audit-III) for the consideration of the said documents.

10. The Income Tax Appellate Tribunal ("I.T.A.T.") has not adverted to this aspect of the case but has held *inter alia* that "Section 128(5) is against the will of the Law & the spirit of the Law is to make decision based on justice." It was not proper for the I.T.A.T. to have made such observation with respect to a statutory requirement.

11. In view of the above, the instant reference is answered in the positive, the orders dated 04.06.2014 passed by the A.T.I.R. as well as the order dated 24.06.2011 passed by the Commissioner are set-aside, and the matter is remanded to the Commissioner Inland Revenue (Appeals) for the decision on the respondent's appeal against the order dated 27.07.2010 passed by the Officer Inland Revenue (Audit-III). The respondent's appeal would be deemed to be pending and the same shall be decided strictly in accordance with the law bearing in mind the requirements of Section 128(5) of the 2001 Ordinance.

(ARBAB MUHAMMAD TAHIR)  
JUDGE

(MIANGUL HASSAN AURANGZEB)  
JUDGE