

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Tax Appeal. 122/2000

The Commissioner of Income Tax/Wealth Tax.
Titled Vs

(a) Judgment approved for reporting

Yes/No

(b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

Yes No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

Dr. J. I. Khan
Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO.: TAX APPEAL NO.122/2000.

THE COMMISSIONER OF INCOME TAX/WEALTH TAX

APPELLANT
PETITIONER

VERSUS

RAMIZ-UL-HAQ

RESPONDENT
DEFENDANT

Appeal/revision against the decree or order (as the case may be) of _____

SERIAL NO. OF ORDER OF PROCEEDINGS	DATE OR ORDER OF PROCEEDINGS	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

12.12.2011

Hafiz Munawar Iqbal, Advocate for the
appellant.

NOOR-UL-HAQ N. QURESHI J.- The

appellant/Commissioner of Income Tax/Wealth Tax,
Companies Zone, Islamabad has filed the instant
appeal under Section 27(1) of the Wealth Tax Act,
1963, against the order dated 23.10.1999 and has
requested to decide the following questions of law:-

(i) *Whether in the facts and
circumstances of the case the
honourable Tribunal was justified
to hold that assessee in this case
was not legal owner of the plot in
question as the title therein was
not transferred to him and,
therefore, it could not be included
in his net wealth?*

(ii) *Whether in the facts and
circumstances of the case the
honourable Tribunal was justified*



to hold that due to non-execution of conveyance deed the plot in question did not belong to the assessee on the valuation date and consequently could not be included in his net wealth for charge of Wealth Tax?"

2. Arguments heard and record perused.
3. Learned counsel for the appellant contended that the old appeals pending since long were not placed before the Court, but the appellant has interest towards the appeal pending. On query raised by the Court about Office Objection, which was to be complied within three days, but neither the appellant nor the counsel ever cared about it to comply the Office Objection within the period stipulated.
4. Likewise, on an objection about the delay in filing the appeal and not adopting the legal procedure as envisaged by Section 27(1) of the Wealth Tax Act, 1963, as well as the proof of service of the order upon them. Learned counsel for the appellant contended that while receiving copy of the order in the Office, they used to affix the date of receiving at front page with receiving diary number. In our view, it is not supported from the record.
5. The very main issue respecting proposition of law, it is quite obvious that the appellant had to submit an application under subsection (1) of section 27 of Wealth Tax Act, 1963 to Income Tax Appellate



Tribunal to state the case on the ground of question of law arises be referred to the High Court. Either party within 120-days from the date of such refusal through a notice, apply to the High Court requesting for such relief, as they initiated in the instant appeal. Surprisingly, no such application within 90-days of the date upon which, he served with the notice on an order as required by Subsection (4) of Section 27(1) of the Wealth Tax Act 1963, has ever submitted nor such notice of refusal has also been submitted or said to have been issued by the Tribunal informing such refusal through the notice.

6. The relevant procedure to seek such reference by making an application to the Tribunal as envisaged by Section 27 (1) of Wealth Tax Act, 1963. For the convenience, whole Section 27 of Wealth Tax Act, 1963 is reproduced hereunder: -

27 (1) Within ninety days of the date upon which he is served with an order by the Appellate Tribunal, the assessee or the Commissioner may present an application in the prescribed form and, where the application is by the assessee, accompanied by a fee of one hundred rupees, to the Appellate Tribunal requiring it to refer to the High Court any question of law arising out of such order, and the appellate Tribunal shall draw up a statement of the case and refer it to the High Court.

(2) The statement of the High Court shall set forth the facts, the determination of the Appellate Tribunal and the question of law which arises out of the case.

(3) If the High Court is not satisfied that the statement in a case referred to it under this section is sufficient to enable it to

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determine the question of law raised thereby, it may require the Appellate Tribunal to make such modifications therein as it may direct.

(4) If on an application made under subsection (1) , the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within ninety days from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, frame the question of law and proceed to hear the case.

(5) If the High Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modification therein as it may direct.

(6) The High Court, upon hearing any such case shall decide the question of law raised therein, and in doing so may, if it thinks fit, after the form of the question of law and shall deliver judgment thereon containing the ground on which such decision is founded and shall send a copy of the judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(7) Where the amount of any assessment is reduced as a result of any reference to the High Court, the amount, if any, overpaid as wealth tax shall be refunded with such interest as the Commissioner may allow - unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court makes an order authorizing the Commissioner to postpone payment of such refund until the disposal of the appeal in the Supreme Court.

(8) The costs of any reference to the High Court shall be in the discretion of the Court.

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(9) *Section 5 of the Limitation Act, 1908, shall apply to an application to the High Court under this section.*

(10) *Any application made to the Appellate Tribunal or any question of law referred to the High Court by the Appellate Tribunal before the first day of July, 1971, shall be disposed of by the Appellate Tribunal or the High Court, as the case may be, as if the Finance Ordinance, 1971, had not come into force."*

7. When such application has not been submitted, therefore, no question of its refusal or issuance of notice arises.

8. Such position is lacking on the part of appellant, who has not bothered to pursue his own claim by adopting the legal procedure as envisaged by Section 27(1) of the Wealth Tax Act, 1963, enabling the Appellate Tribunal for making reference to the High Court.

9. Therefore, in our humble view, unless a proper procedure is not adopted by a party under the law, the party cannot seek such a relief by invoking any of the jurisdiction of the High Court beyond the boundaries sketched by law.

10. Therefore, under the circumstances, when the party i.e. the appellant themselves sit over their own rights with such slackness on their part, as such, they are not entitled for the relief claimed, for which the procedural law does not provide any favour. The appellant failed to follow the spirit of law for seeking relief claimed in the instant appeal.

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11. From the perusal of the appeal it is evident that the present appellant had filed the instant appeal on 12.02.2000 against the order of Income Tax Appellate Tribunal dated 23.10.1999, however, certain objections were raised by the office and the appellant was directed to file the appeal after removing the objections within three days, but the appellant filed the instant appeal on 30.3.2000 after removing the objection i.e. after about twenty days of the passing of period of limitation, as the appellant in Para-3 of the appeal, himself has mentioned that limitation under Section 27 of Wealth Tax Act, 1963 expires on 14.2.2000 and that too, without any application for condonation of delay. It has been the constant view of the superior Courts that inordinate delay in filing of the appeal in such like situation, after the expiry of period of limitation would be considered as barred by time. In this regard, reliance is placed on the judgment reported as "1997 SCMR 1224 (LAHORE Development Authority Vs. Muhammad Rashid)". As such, the instant appeal is badly time barred as well as the appeal in its present form is not in consonance with law. Resultantly, the same is hereby **dismissed in limine.**

(CHIEF JUSTICE)

(NOOR-UL-HAQ N. QURESHI)
JUDGE*AR.ANSARI/*Approved for Reporting.*

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Blue slip added.