

**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**(JUDICIAL DEPARTMENT)**

**I.T.R. No.15/2014**

M/s Pakistan Tobacco Company Ltd.

*versus*

Additional Commissioner Inland Revenue, etc.

**I.T.R. No.16/2014**

M/s Pakistan Tobacco Company Ltd.

*versus*

Additional Commissioner Inland Revenue, etc.

**I.T.R. No.17/2014**

M/s Pakistan Tobacco Company Ltd.

*versus*

Additional Commissioner Inland Revenue, etc.

*and*

**I.T.R. No.18/2014**

M/s Pakistan Tobacco Company Ltd.

*versus*

Additional Commissioner Inland Revenue, etc.

Applicant by: Sardar Ahmad Jamal Sukhera, Advocate.

Respondents by: Syed Ishfaq Hussain Naqvi, Advocate.

Date of Hearing: 25.01.2021.

**MOHSIN AKHTAR KAYANI, J:** Through this single judgment, we intend to decide the captioned income tax references having similar questions of law and facts.

2. Brief and consolidated facts are that M/s Pakistan Tobacco Company Ltd. (applicant) is engaged in the business of manufacturing, marketing and sale of various brands of cigarettes, who filed income tax return for the years 2007, 2008, 2009 & 2010, regarding which Additional

Commissioner Inland Revenue (ACIR) issued show cause notice alleging therein that the deemed assessment order passed by the Commissioner was erroneous and subsequently amended the assessment order deemed to have been passed by the Commissioner. The applicant company aggrieved thereby preferred appeals against respective tax year before the Commissioner Inland Revenue (Appeals), Islamabad, which were dismissed vide order dated 20.09.2011, against which applicant company approached the learned Appellate Tribunal Inland Revenue (ATIR) in appeals, however the Tribunal upheld the decision of ACIR and that of CIR (Appeals) and dismissed the appeals of applicant vide impugned order dated, 31.03.2014. Hence, captioned income tax references.

3. Learned counsel for appellant contended that order passed by the ATIR is a non-speaking order, which merely states that orders of the ACIR and CIR (Appeals) have dealt with the submissions of the applicant, as such no findings have been given by the learned ATIR; that power to amend an assessment under Section 122(5A) vests in the Commissioner, who in terms of Section 210 of the Ordinance is empowered to delegate all or any of his powers and functions conferred upon him under the Ordinance, by an order in writing to any officer of Inland Revenue subordinate to the Commissioner, even otherwise, the Commissioner in terms of Section 122(6) has to issue an amended assessment order, as such, this power was never delegated and, therefore, the order in question issued by the ACIR is without lawful authority; that appellant has been

condemned unheard in violation of Section 122(9) of the Ordinance while amending the assessment.

4. Conversely, learned counsel for respondents opposed the filing of instant income tax references on the grounds that the revenue authorities have rightly appreciated the facts and circumstances of the case while passing the impugned orders; that the loss claimed is not actually realized loss, rather it was notional loss, which required to be proved through documentary evidence, as such, the applicant Company despite repeated requests to provide documentary evidence has failed to bring on record any document to satisfy the revenue authorities; that applicant's claim of expenses on account of damaged obsolete material is inadmissible as deduction was claimed in one year instead of amortizing it over a period of ten (10) years; that applicant company has badly failed to prove his case before the revenue authorities and appeals filed thereto have been dismissed in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that the applicant Company through the captioned income tax references have brought on record the following questions of law to be answered by this Court:

1. *Whether the learned Tribunal erred in law in failing to appreciate that the obligation to "consider" whether the order sought to be amended is erroneous as well as prejudicial to the interest of revenue in section 122 (5A) of the Income Tax Ordinance 2001 is a function of the Commissioner which was not delegated in the order under section 210 and, therefore, jurisdiction exercised by the Additional Commissioner was without lawful authority?*

2. *Whether the learned Tribunal erred in law in failing to appreciate that the function to provide hearing in terms of section 122 (9) not having been delegated in the order of delegation under section 210, the obligation to hear the matter remained with the Commissioner and that, therefore, in such a circumstance hearing conducted by the Additional commissioner and consequential order passed thereon was without lawful authority?*
3. *Whether the learned Tribunal erred in law in failing to appreciate that in terms of section 122 (6) despite delegation of power under sub-section (5A) order has to be passed by the Commissioner unless the power under section 122 (6) is also delegated and that having not been done, the order passed by the Additional Commissioner was without lawful authority.*
4. *Whether the words "all or any powers and functions" in section 210 are to be read down so as to exclude from there purview the power of Commissioner to delegate any of his functions or powers with respect to amendment of assessment so as to make section 210 (1) and (1A) in consonance with Article 10A of the Constitution of the Islamic Republic of Pakistan 1973 which enshrines there in the doctrine of due process?*
5. *Whether in the facts and circumstances of the case the learned Tribunal erred in law in failing to hold that the order of the additional Commissioner was without jurisdiction as the power to pass an amended assessment order, as opposed to mere amendment of assessment, is provided under section 122 (6) of the Income Tax Ordinance 2002 which power was never delegated to the additional Commissioner by the Commissioner.*
6. *Whether in the facts and circumstances of the case the learned tribunal erred in law in failing to hold that the order of the additional Commissioner was without lawful authority and in excess of jurisdiction on the ground that no contentious issues can be raised under section 122 (5A).*
7. *Whether the learned tribunal erred in law in failing to hold that the order of the additional Commissioner was without lawful authority and in excess of jurisdiction on the ground that power under section 122 (5A) can only be exercised on*

*the basis of material available on the record and not on the basis of material sought in the proceedings under section 122 (5A).*

8. *Whether the learned tribunal erred in law in failing to hold that the function/obligation to “consider” under section 122 (5A) could neither be delegated nor was in fact delegated to the additional Commissioner and as such the order of the additional Commissioner is without jurisdiction.*
9. *Whether the learned Tribunal erred in law in failing to hold that the additional Commissioner having amended assessment once and that order having merged with the appellate order the original order could not have been amended.*
10. *Whether in the facts and circumstances of the case the learned tribunal erred in law in upholding disallowance of exchange rate loss.*
11. *Whether the learned Tribunal, in the facts and circumstances of the case, erred in law in upholding disallowance under the following heads without even considering the arguments of the applicant:*
  - I) *provision for stock*
  - II) *head office relocation expenses*
  - III) *receivables from BAT Bangladesh written off*
  - IV) *sundries*
  - V) *operating fixed assets and capital in progress written off*
12. *Whether on facts and in the circumstances of the case the learned Tribunal erred in law in upholding the treatment of the following as intangible under section 24 of the Income Tax Ordinance 2002 to be amortized over 10 years:*
  - I) *damaged and obsolete materials written off*
  - II) *capital work in progress written off*
  - III) *stores and spares written of*
13. *Whether the learned Tribunal erred in law in upholding the Commissioner’s order, wherein Additional Commissioner’s action, of disallowing exchange loss by holding that related evidence was not produced, was upheld.*

7. During proceedings of the matters before this Court, the applicant company filed C.M. No.387/2014 in the captioned I.T.R. No.15/2014, seeking permission to raise additional question of law, which is as under:

*“Whether an officer of BS-18 posted on OPS basis as Additional Commissioner can lawfully be delegated the power to amend an assessment under Section 122(5A) which in terms of Section 210 (A) cannot be delegated to an officer below the RANK of Additional Commissioner which RANK is of BS-19.”*

8. The applicant being aggrieved with the order of Income Tax Appellate Tribunal on different grounds has raised the primary question qua the exercise of jurisdiction by the Commissioner, who while exercising his authority in terms of Section 120 of the Income Tax Ordinance, 2001 has delegated his powers and function to his subordinate officer, as such, the applicant contended that so far the assessment under the Ordinance is concerned, the Commissioner cannot in terms of Section 120 of the Income Tax Ordinance, 2001 delegate / assign to subordinate officer any authority for assessment in terms of Section 120(b), and as such, Order No.616, dated 07.03.2009, is ultra vires to the Income Tax Ordinance, 2001. The applicant argued his case with further contention that the assessment in terms of Section 120 of the Income Tax Ordinance, 2001 is being made by the Commissioner and if power under Section 122(5A) is to be exercised, which power is revisionary power as held by the superior Courts, therefore, such power can only be exercised by higher authority than the Commissioner and not by subordinate authority.

9. While dealing with said proposition, the learned counsel for respondent department has drawn attention of this Court towards similar

question earlier raised by the applicant through W.P. No.3999/2012, which was decided by this Court vide judgment dated 28.12.2015, reported as **2016 PTD 596 Islamabad (Pakistan Tobacco Company Ltd. vs. Federation of Pakistan)**, whereby learned Single Judge in Chambers has settled all the objections of delegation in the following manner:

"8. Before adverting to the arguments advanced by the learned counsel, it would be beneficial to examine the scheme of the Ordinance. The Ordinance has been promulgated with the object to consolidate and amend the law relating to income tax, and to provide for matters ancillary thereto or connected therewith. Chapter XI relates to the administration i.e. describing various Income Tax authorities, how they are appointed and vested with powers under the provisions of the Ordinance. Section 207 enumerates the hierarchy of the Income Tax authorities, starting with the Board at the highest level to an Auditor Inland Revenue. It, inter alia, includes the Commissioner Inland Revenue and several officers lower in rank. The supervision and overseeing of the general administration is vested in the Board. The latter is defined in clause (8) of section 2 of the Ordinance as meaning the "Federal Board of Revenue" established under the Federal Board of Revenue Act, 2007. Section 208 empowers the Board to appoint as many Chief Commissioners, Commissioners, Additional Commissioners, Deputy Commissioners, Assistant Commissioners of Inland Revenue etc. Subsection (2) of section 208 empowers any Income Tax authority to appoint any other income tax authority subordinate to it and such other executive or ministerial officers and staff as may be necessary, subject to orders or directions as may be issued by the Board. Section 209 provides that, subject to the Ordinance, the Chief Commissioners, the Commissioners and the Commissioners (Appeals) shall perform all or such functions and exercise all or such powers under the Ordinance as may be assigned to them in respect of such persons or classes of persons or

*such areas as the Board may direct. However, the Board or the Chief Commissioner have been vested with the power to transfer jurisdiction in respect of cases or persons from one Commissioner to another. Likewise, they may also confer upon or assign to any officer of the Inland Revenue all or any of the powers and functions conferred upon or assigned to the Commissioner. The provision further provides for other terms and conditions in the context of jurisdiction and powers vested in various Income Tax authorities. Section 210 of the Ordinance vests in the Commissioner the power to delegate powers. It provides that the Commissioner may, by an order in writing, delegate to any Officer of the Inland Revenue, subordinate to the Commissioner, all or any of the powers or functions conferred upon or assigned to the latter under the Ordinance, other than the power of delegation. The exception or restriction is provided in subsection (1A) and the same is to the effect that the powers of amendment of assessment contained in subsection (5A) of section 122 cannot be delegated to an officer of the Inland Revenue below the rank of an Additional Commissioner Inland Revenue. The Commissioner is also empowered to delegate the powers to a firm of Chartered Accountants or a firm of Cost and Management Accountants appointed by the Board for the purposes of conducting an audit under section 177. The Commissioner is also vested with the power to cancel, modify, alter or amend an order under subsection (1) of section 210."*

10. In view of above settlement of question, we have also gone through the judgment reported as **2013 PTD 1012 Sindh (M/s Shell Pakistan Limited vs. Pakistan through Secretary Revenue Division and 2 others)**, whereby similar question has been settled in the following manner:

*"10. When we read the definition and meaning of the Commissioner Inland Revenue as provided under section 2(13) of the Income Tax Ordinance, 2001, it includes not only the Commissioner, Inland Revenue appointed under section 208 of the*



*Ordinance but also includes an officer of Inland Revenue who has been delegated all or any of the powers and functions of the Commissioner Inland Revenue. Under section 211 of the Ordinance the delegatee's acts are to be taken as if performed by the Commissioner Inland Revenue himself. Hence the task of the Commissioner Inland Revenue can be entrusted to Additional Commissioners Inland Revenue who upon delegation of authority exercise same powers and functions as are vested in the Commissioner Inland Revenue and are to be taken as if exercised by the Commissioner himself. The powers of Commissioner Inland Revenue are delegated to Additional Commissioners as they are also considered competent enough to do deal with the work assigned to them. This power is exercised by the Federal Board of Revenue or the Chief Commissioner Inland Revenue under section 209 (2) of the Income Tax Ordinance, 2001 and by a Commissioner Inland Revenue under section 210 of the said Ordinance. Thus the powers of delegation of authority under sections 209, 210 are invoked out of sheer need of the Income Tax department as scrutiny of tax returns, which is an onerous and time consuming task needs a lot of man-hours and application of mind which cannot be completed within reasonable time if left only to be done by the Commissioners Inland Revenue. Hence we find no force in the contention of the petitioner's counsel that delegation of powers by Commissioner Inland Revenue to Additional Commissioner Inland Revenue amounts to abdication of his powers."*

11. This Court has also relied upon the judgment of the apex Court reported as 2012 SCMR 1151 (M/s Ocean Pakistan Limited vs. Federal Board of Revenue, Islamabad), whereby the question has been settled in the following manner:

*"6. Since the objection is raised upon the competency of the Additional Commissioner Inland Revenue to issue the subject*

*show cause notice, the learned counsel for the respondent has referred to section 210 of the Ordinance, 2001, which provides that the Commissioner may, by an order in writing, delegate all or any of his powers or functions to the officer mentioned therein. In particular the learned counsel has referred to section 210(1A) of the Ordinance, 2001, which reads as under:--*

*"210. (1A) The Commissioner shall not delegate the powers of amendment of assessment contained in sub section (5A) of section 122 to an officer of Inland Revenue below the rank of Additional Commissioner Inland Revenue."*

*He submits that in this case show cause notice has been issued by the Additional Commissioner Inland Revenue, which is covered within the provisions of section 210 of the Ordinance, 2001; he has also placed on record a copy of the notification dated 8-3-2011, wherein the Commissioner Inland Revenue, while exercising its powers under section 210(1A) of the Ordinance, 2001 has delegated its powers in respect of amendment of assessment under section 122(5A) of the Ordinance, 2001 to the Additional Commissioner Inland Revenue."*

12. In view of above mentioned land mark judgments of the superior Courts, the question of delegation of authority has been settled, as such the ground raised by the applicant is not substantiated and findings to that extent by the forums above are upheld.

13. The applicant has also raised the objection through additional question by highlighting basic pay scale and rank of the tax officer and argued that the Commissioner has to be a civil servant not less than of BPS-20, otherwise exercise of power vested in Commissioner would suffer for want of jurisdiction. This aspect has also been dealt with in the case of *Pakistan Tobacco Company Ltd. supra* by this Court and it has rightly been held that income tax authorities have been described in Section 207 of the Income Tax Ordinance, 2001 and no reference has been referred regarding entitlement to hold the post on the basis of grades of an officer. BPS is an abbreviation for Basic Pay Scale, which relates to various grades of a civil

servant, meant for determining the salary, allowances and other perks and privileges, per se, concept of BPS is alien to Income Tax Ordinance, 2001.

14. In the light of above reason, the objection raised by the applicant qua delegation of authority and basic pay scale have lost their significance, and these questions are not required to be answered, except the reason referred in the preceding paragraphs.

15. The second objection raised by the applicant is regarding upholding of disallowance under the heads for (i) provision for stock, (ii) head office relocation expenses, (iii) receivables from BAT, Bangladesh written off, (iv) sundries and (v) operating fixed assets and capital in progress written off. All these issues have been raised in the show cause notice, even same has been replied by the applicant, which has been reproduced in assessment order, whereupon separate findings were given by Additional Commissioner, Commissioner of Appeals as well as by the Income Tax Appellate Tribunal. The applicant contends that in terms of Section 121, which deals with disallowance of expense, if it is the nature of capital expense, he further contends that expense is ascertained liability and has actually been written off after necessary approval from excise authority.

16. The applicant has drawn attention of this Court towards Section 134(3) of the Income Tax Ordinance, 2001 on the ground that the liability can be determined with reasonable accuracy and he has taken the stance that assessing officer has issued show cause notice in terms of Section 121(N) and adjudged the liability in terms of Section 134(3). While giving an anxious thought to the contention of applicant we have gone through

Section 121 of the Income Tax Ordinance, 2001, which deals with deduction not allowed and as such, no deduction shall be allowed in computing of assessment under the head of income of business except that provided in Division-III and any expenditure paid or payable of capital nature and as such, Section 34 deals with accrual basis accounting which imposes an obligation that amount of liability can be determined with reasonable accuracy. The applicant company has already ascertained the liability of the stock with the specific claim that the same was written off by the company after obtaining necessary approval from the excise authority. The applicant company is following mercantile system of accounting and as such, the accrual basis accounting in terms of Section 34 of the Income Tax Ordinance, 2001 has been applied, but the plea raised by the applicant requires adjudication as to whether what kind of expenses fall within the purview of Section 34 of the Income Tax Ordinance, 2001. The bare reading of Section 34 gives a clear picture that only those accrued liabilities are allowed which are ascertainable subject to reasonable accuracy and as such, the provision for stock cannot be regarded as having the reasonable accuracy, especially when the damaged stock cannot be determined with reasonable accuracy, therefore, the tax authorities have rightly disallowed the claim of provision for stock.

17. The applicant has heavily relied upon head office relocation expenses, whereby the head office of the applicant company has been shifted from Evacuee Trust Complex, Agha Khan Road, Sector F-5/1, Islamabad to Dubai Plaza, Salman Market, Sector F-11, Islamabad mainly

on the ground that a terrorist attack had taken place at Marriott Hotel on 20.09.2008, which also affected the Evacuee Trust Complex, but surprisingly the company has shifted its head office in the year 2009 and such expense was allowed in tax year 2009, therefore, same could not be allowed again for the tax year 2010, hence the claim of head office shifting has rightly been settled.

18. The applicant has also highlighted the receivables from BAT Bangladesh written off and as per applicant's contention the tax authorities have not considered the conditions referred in clauses a, b, c of sub-Section 1 of Section 29 of the Income Tax Ordinance, 2001. In order to go through the said provision, the same is hereby reproduced as under:

**29. Bad debts.** – (1) *A person shall be allowed a deduction for a bad debt in a tax year if the following conditions are satisfied, namely: –*

- (a) *the amount of the debt was –*
  - (i) *previously included in the person's income from business chargeable to tax; or*
  - (ii) *in respect of money lent by a financial institution in deriving income from business chargeable to tax;*
- (b) *the debt or part of the debt is written off in the accounts of the person in the tax year; and*
- (c) *there are reasonable grounds for believing that the debt is irrecoverable.*

19. While considering the above mentioned provisions, the onus is upon the applicant company to prove the bad debts, which are irrecoverable, whereafter they could be written off, but the applicant has failed to produce any record before the lower forums. As per the Qanun-e-Shahadat

Order, 1984, the onus is upon the person who alleges a fact to be true in terms of Article 117, even otherwise, the concept of bad debts has been settled in case reported as 2020 SCMR 1045 (Commissioner Inland Revenue, Karachi v. M/s Faisal Bank Limited), whereby it has been held that:

*"What remains to be considered is the other question whether the High Court has stated too broadly the test by which debts claimed by an assessee may reasonably be believed as irrecoverable and therefore be classified as bad debts. It is not a matter of discretion for the assessee to decide what a bad debt is; rather the assessee has to establish reasonable grounds showing that having taken the requisite lawful steps for recovery of the outstanding debts, the same are not recoverable in the foreseeable future. It goes without saying that if in a subsequent tax year recovery of a bad debt is effected then the same is taxable as income. Accordingly, to our minds the test laid down in Commissioner of Income Tax v. National Bank of Pakistan, Karachi (PLD 1976 Karachi 1025 at page 1028) that "the question will always be of the estimate of the facts and circumstances of a case, and because human estimates are necessarily fallible, the respondent's claim and/or its books of account cannot be rejected, merely because it maintains a system of accounts, which permits it, in the event of windfall from the debtor, so to say, to reverse the earlier entries writing off a debt as irrecoverable", gives an accurate approach on how the relevant provision, namely, section 29 of the Ordinance, is liable to be construed."*

In view of above settled position, no claim with respect to bad debts is made out.

20. The applicant has framed specific question regarding sundries, which has been raised by the tax authorities in show cause notice. We have confronted the applicant's counsel as to whether the applicant company

had given a head wise details of all revenue expenditures incurred by the company in its profit and loss account, but the applicant answered in negative with the contention that it is impossible to give head wise details and as such, the details have been provided by the company financial statement prepared under the Companies Ordinance, 1984 on the basis of international accounting standards. This documentary evidence provides the major specific heads of expenditure and as such, minor details were not provided, therefore, certain expenses claimed by the applicant have not been justified and the tax authorities have rightly add back to the profits for the tax years in question.

21. Learned counsel for applicant also argued on the head of operating fixed assets and capital in progress written off, which have been settled by the tax authorities while considering the same as intangible as the same do not have ascertainable useful life in terms of Section 24 of the Income Tax Ordinance, 2001 and it has rightly been amortized over a period of 10 years, even otherwise, this aspect is relating to factual question.

22. The applicant also claims that the tax forums have not allowed the exchange loss as admissible expense and as such, heavily relied upon Section 34 of the Income Tax Ordinance, 2001 which deals with accrual basis accounting. During the course of arguments, we have confronted the applicant as to whether the applicant company has foreign currency account for the purpose of business transactions, whereby the applicant answered in affirmative. In such eventuality, the applicant company cannot take refuge under the exchange loss, as the entire argument of the

applicant is based upon a notional loss, which could not be justified in any manner.

23. While dealing with the proposition learned counsel for applicant contends that the learned Tribunal erred in law while holding that order of Additional Commissioner was without lawful authority and exercised the jurisdiction not vested to it on the ground that power under Section 122(5A) of the Income Tax Ordinance, 2001 can only be exercised on the basis of material available on record and not on the basis of material sought in proceedings under Section 122(5A). The Income Tax Appellate Tribunal while dealing with the proposition has considered the objection raised by the applicant and based its findings on the ground of valid definite information and on the basis of that information the assessing officer has confronted the applicant to the said material and invoked the provision of Section 122(5A) of the Income Tax Ordinance, 2001. Hence, it is necessary to go through the show cause notice issued to the applicant which reveals that assessment record of the applicant has been examined, whereby the return of total income and audit of accounts transpired that the applicant has erred in claiming the expenses comprising of royalty, reconstruction cost, stock written off, stores and space written off, relocation expenses, foreign exchange loss, receivable from BAT Bangladesh written off and sundries, per se, all these expenses are considered to be erroneous claim and prejudicial to the interest of revenue. The question arises as to whether such information is to be considered as definite information or otherwise, which is the key factor of Section 122 of



the Income Tax Ordinance, 2001. We have gone through the judgments reported as 2019 SCMR 158 (Dewan Khalid Textile Mills Ltd. v. Commissioner of Income Tax, Karachi) and 2019 SCMR 1639 (Chief Commissioner Inland Revenue, Peshawar v. Sabrina Tent Services), whereby it was held that every information cannot be treated as the basis for re-opening of assessment, but the information should be of the nature which should qualify as “definite information” which could not be given universal meaning but it will have to be construed in its case. Similarly, when the assessee has already provided complete details and in absence of discovery of any new fact there is no scope for re-opening of assessment. It has also been held by the apex Court that definite information did not mean a re-analysis of existing information or an analysis of further information that was previously accessible but have not been taken into account by the tax authorities. While appreciating these legal principles the question arises as to whether the original assessment can be amended in terms of Section 122(5A) of the Income Tax Ordinance, 2001? The answer to the proposition has been considered on the basis of audit conducted by the tax department as reflected from show cause notice, which discloses the entire question that the details provided by the applicant itself are not justifiable from the accounting standards *vis-a-vis* other details and they have rightly been pointed out after audit that certain illegalities have been committed by them in dealing with the deduction of expenses on account of staff separation cost, head royalty during the year 2006, head information technology, doubtful debts, net foreign exchange loss,

restructuring cost, stock written off, foreign exchange loss, receivable from BAT Bangladesh, sundries, head office relocation expenses, etc.

24. In view of above detailed discussion, both the forums below have rightly answered the question in a proper manner, as such, it is settled proposition that factual aspects and disputes could not be considered in reference jurisdiction, rather only legal issue can be raised at the High Court level, especially when factual controversy has already been resolved by the tribunal. Reliance is placed upon 2011 PTD 876 Islamabad (Ahmed Enterprises, Islamabad v. Commissioner of Tax (Legal), LTU, Islamabad).

Resultantly, the Questions No.1 to 6 & 8 are based upon delegation of power within contemplation of Section 210 of the Income Tax Ordinance, 2001, whereby Chapter 11 of Ordinance deals with administration, various authorities, jurisdiction and delegation of powers and function. Sections 207 and 214C of the Ordinance define the powers and functions of various authorities and modes of appointment, delegation of powers / functions and how they are to be exercised. Similarly power of amendment is provided in Section 122 (5A), as such, the only condition to exercise the power is to issue show cause notice under Section 122(9) of the Ordinance. Section 210(1A) provides that the Commissioner can delegate the powers of amendment to Additional Commissioner as provided in sub section 5A of Section 122. The object to delegate his power to the Additional Commissioner is within the four corners of law in reference to Section 210 of the Ordinance. The objections raised in Questions 3, 4 & 5 as separate delegation of powers of Section 122(6) have also been raised in constitutional jurisdiction of this Court in case reported as 2016 PTD 596

Islamabad (Pakistan Tobacco Company Ltd. vs. Federation of Pakistan), whereby this aspect has specifically been dealt with by this Court and objection raised by the applicant has been discarded in Para-22 of the judgment. Hence, no question of law is made out.

25. Question No.9 raised by applicant, if considered justified qua the amended assessment by Additional Commissioner with reference to merger doctrine, the language of Section 122(5A) is to answer the entire proposition and in normal parlance the doctrine of merger is not justiciable in the light of provisions of Sections 122(1), 122(4), 122(5A) and 122(7) of the Ordinance, become redundant, as such, redundancy could not be imported into the law when the legislature has not provided such kind of inference from the plain language of the provision. The remaining Questions i.e. Questions No.10 to 13 are based on factual aspects, hence are not required to be answered in reference jurisdiction.

26. In view of above, the captioned income tax references are answered in NEGATIVE, as such, the orders passed by the ITAT as well as by lower forums are hereby MAINTAINED.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 09.03.2021.

JUDGE

JUDGE

Khalid Z.