JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

INCOME TAX REFERENCE NO. 48 OF 2021

Commissioner Inland Revenue, Legal Zone, Large Taxpayers Office
Vs
M/s Wateen Telecom Limited, etc.

APPLICANT BY: Syed Ishfaq Hussain Naqvi, Advocate.

RESPONDENT BY: Hafiz Muhammad Idrees, and Syed Fareed Bukhari, Advocates.

DATE OF HEARING: 12-07-2021.

BABAR SATTAR, J.- This is a reference application under section 133 of the Income Tax Ordinance 2001 **("Ordinance")** against the order of the learned Appellate Tribunal Inland Revenue **("Tribunal")** dated 23.10.2020. The impugned order states the following:

> *"…[B]are perusal of the record reveals that the amended assessment order was passed by the Assessing Officer on 14.07.2016. Section 122(2) of the Income Tax Ordinance, 2001 provides that no order under sub-section (1) shall be amended by the Commissioner after the expiry of five years from the end of financial year in which the Commissioner has issued or treated to have issued the assessment order to the taxpayer. This case relates to the Tax Year 2010, hence the period of five years' limitation for amendment starts from the end of financial year 2010 i.e. 30th June 2010 and expires on 30th June, 2016 whereas the*

amendment order is passed on 14th July, 2016 which is grossly time barred and hit by limitation."

2. As is apparent from contents of the impugned order, it set-aside the order passed by the learned Commissioner (Appeals) dated 14.04.2017 on the basis that the Order-in-Original was barred by limitation provided under section 122(2) of the Ordinance. The Order-in-Original which reflected the hand written date as 29.06.2020, but was purportedly passed on 14.07.2016, was challenged before the learned Commissioner (Appeals). Respondent No.1 raised the objection that Order-in-Original was passed beyond the limitation period and was not sustainable in the eyes of law. The learned Commissioner (Appeals) noted in his order that such plea of the appellant had no merits, but chose to record no reasons for such finding. He then declared that the appeal would be decided on merits. The relevant part of the order of the learned Commissioner (Appeals) through which he remanded the matter back to the Commissioner for adjudication afresh under section 122(2) of the Ordinance is as follows:

"The plea of the appellant has been considered in the light of the impugned order. Perusal of the impugned order it has been noted that the first notice was issued for compliance by 08.06.2016 and amendment proceedings culminated in a short span of 26 days and the assessing officer created a huge demand. Facts of the case make it clear that amendment has been framed in a fast mode without providing due opportunity of being heard to the appellant as enshrined in Article 10A of the Constitution and Section 24(A) of

the General Clauses Act 1924. Moreover, this is violative of FBR Circular No. 7 of 1994 which envisages that at least three notices of 15 days may be issued so as to provide ample time to the taxpayer to put forth their stance. Considering the above legal position without going into the merits of the other grounds of appeal, I deem it appropriate to remand back the case to the OIR to re-examine the issues by affording the opportunity of being heard to the appellant and inter alia the stance of the appellant may be duly reflected in the amendment order. Since the case has been remanded back on legal ground, hence other grounds of appeal do not require adjudication."

3. It is evident from the order passed by the learned Commissioner (Appeals) that he did not find that the Order-in-Original was sustainable in the eyes of the law and held that the entire proceedings had been conducted in a hasty and slipshod manner as the limitation prescribed under section 122(2) of the Ordinance to order an amendment of an assessment was about to expire. However, while holding that the Order-in-Original was passed at the verge of expiry of the limitation period prescribed in section 122(2) of the Ordinance in breach of the taxpayer's Article 10A rights and as well as directions of FBR to provide at least three opportunities to a taxpayer to present his case (spread over a 45 days period), he still remanded the matter back to the Commissioner to take another crack at creating liability against the taxpayer and thereby purporting to extend the limitation period prescribed under section 122(2) of the Ordinance.

4. The learned counsel for the applicant submitted that the Order-in-Original was passed on 29.06.2016 and as the limitation period was due to expire on 30.06.2016, the order had been passed within time. He took the Court through excerpts of Register of Demand maintained by the applicant which noted that, "effect of proceedings" under section 122(5) of the Ordinance had been finalized on 29.06.2016 and the factual determination rendered by the learned Tribunal that the Order-in-Original was passed on 14.07.2016 was against the facts as evident from the record produced before this Court. The learned counsel contended that whether or not the learned Tribunal made the correct factual determination in accordance with record was a question of law that could be determined by this Court in its jurisdiction under section 133 of the Ordinance.

5. The learned counsel for the respondent contended that question of law that had been framed by the applicant was not a question of law at all. That the applicant was essentially seeking the intervention of this Court in exercise of its jurisdiction under section 133 of the Ordinance to reconsider and override a factual determination that had been conclusively made by the learned Tribunal, which was not permissible. He further submitted that notice under section 137(2) was also issued on 14.07.2016 and the assertion of the applicant that while notice to amend the assessment under section 122(9) of the Ordinance and the notice of demand under

section 137(2) were issued on 14.07.2016, the Order-in-Original was in fact issued on 29.06.2016 and thus within the limitation period of one day's margin, was tainted with *mala fide*. That it was the consistent and longstanding practice of the tax department that an order creating a liability and the notice of demand were issued simultaneously. He further submitted that even the learned Commissioner (Appeals) had acknowledged in his order that the Order-in-Original was passed in a hasty manner without affording the taxpayer an opportunity to be heard. But instead of setting aside such order for not being sustainable in the eyes of the law having been issued beyond limitation period he remanded the matter back to the Commissioner, which was tantamount to extending the limitation period prescribed under section 122(2) of the Ordinance and was a fraud on the statute.

6. The questions that arise out of the reference application are threefold:

> 1. What is the scope of jurisdiction of this Court under section 133 of the Ordinance and whether in exercise of such jurisdiction, this Court can sit in appeal over factual determinations made by the learned Tribunal?
>
> 2. Was the Order in Original issued beyond limitation period as prescribed under section 122(2) of the Ordinance and can the delay in passing the Order-in-Original under section 122(1) be condoned by the appellate authorities provided for under the Ordinance?

3. Can the Commissioner (Appeals) extend the period of limitation prescribed under section 122(2) of the Ordinance in the event that the Order-in-Original had been passed on the fag-end of the limitation period by remanding the matter back to the Commissioner to be decided afresh?

7. The question of jurisdiction of High Courts under section 133 of the Ordinance has been addressed extensively by the Hon'ble Supreme Court in its judgement reported as ***Messrs Squibb Pakistan Pvt. Ltd. Vs Commissioner of Income TAX (2017 SCMR 1006)***, wherein the following was held:

> *"48. To recapitulate, the problem all along has been the unfortunate legacy of the Act, 1918. This provided a true illustration of advisory jurisdiction, since advice was to be rendered to the Revenue Authority prior to its having passed an order. In 1922, this advisory jurisdiction was retained under section 66(1) of the Act, 1922 which was similarly framed. However, this subsection had, in sum and substance, lost its importance because of subsection (2), which conferred the right to challenge the decision of the Tribunal on questions of law. It was this remedy which was followed thereafter. Section 66(1) ibid thereafter became redundant for all practical purposes and was eventually deleted through a subsequent amendment in 1939 and the same position continued under the Ordinance, 1979 and succeeding law. Thereafter, no advisory jurisdiction remained in any shape or form. But since the significance of the change was not appreciated, the concept of advisory jurisdiction continued to confuse the courts-the corpus had disappeared, but the shadow remained. The law as it stands after the 2005 amendment is now clear beyond any conceptual doubt. There is no question of advisory jurisdiction (which phrase was never used in the law at any stage) and the*

plain words of the section must now be given their ordinary meaning. No hyper technicalities now stand as barriers in the way of substantive justice."

"…[S]ection 133 ibid is appellate in nature and must be construed and applied as such. The language of the law must be given effect to, rather than unnecessarily restricting the scope of the jurisdiction on the basis of judgments from an era when the law and circumstances were completely different. The civilized world, including our own country, has been moving towards greater rights for citizens over the last century to the extent that the privilege of a fair trial has now become a constitutional right. In these circumstances, it is not appropriate to restrict the scope of a legal remedy available to citizens on the basis of old decision, especially when the language of the law is clearly pointing in the opposite direction (Emphasis supplied)."

8. This decision was later relied upon by the august Supreme Court, in its judgment ***Commissioner of Inland Revenue, Legal Division, Lahore and others Vs. Messrs Rafeh Limited (2020 PTD 1657),*** wherein it held that:

"The above shows that the Application under section 133(1), also referred to as the Tax Reference, is in effect an Appeal and it must be construed as such. The misimpression and confusion in some quarters that a Tax Reference invokes advisory jurisdiction of the High Court and therefore the High Court is bound to answer the question of law brought before it is a misconception and is hereby dispelled. Application under section 133(1) of the Ordinance is no different than an appeal and must be construed and applied as such."

9. It is evident from the law laid down by the august Supreme Court that:

(1) Proceedings before the High Court under section 133 of the Ordinance are appellate proceedings.

(2) The decision of the Tribunal in its capacity as the second appellate authority is final to the extent of factual controversies between the parties. The High Court, in proceedings under section 133 of the Ordinance, is to proceed to adjudicate questions of law on the basis of the facts as determined by the Tribunal.

(3) The High Court, in proceedings under section 133 of the Ordinance, may decide any question of law emanating from the proceedings before the Tribunal and is not bound to consider only such questions that arise from the order passed by the Tribunal.

10. The question that arises then is the scope of appellate jurisdiction under section 133 of the Ordinance and the basis on which it is to be exercised, given that the High Court is the third appellate forum adjudicating the dispute between the tax department and the taxpayer. Guidance in this regard can be sought from dicta laid down by the august Supreme Court in relation to exercise of jurisdiction by the High Court as a second appellate forum. The august Supreme Court, while discussing the powers of the appellate court in a regular second appeal, in its judgment titled ***Abbas Ali Shah and 5 others Vs. Ghulam Ali and another (2004 SCMR 1342)*** held that:

> *"…[O]rdinarily the findings of First Appellate Court are not interfered in the second appeal if the same are found to be substantiated by evidence on record and are*

supported by logical reasoning. However, if the findings of the two Courts are at variance, the conflict would naturally be seen to assess the comparative merits of such findings in the light of the facts of case and reasons in support of the two different findings given by the two Courts on a question of fact."

11. This Court in ***R.S.A No. 11 of 2017*** titled ***Abdul Khameed Vs. Muhammad Shabbir, etc.*** held the following:

"7. The principles on basis of which jurisdiction has to be exercised under section 100 of CPC are well settled. Under Section 100 of CPC a High Court can exercise its jurisdiction on any of the following ground:

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

8. It is thus settled that the High Court cannot upset findings of fact of subordinate courts and an appraisal of facts and evidence is also to be undertaken to determine a question of law i.e. whether there has been misreading or non-reading of evidence resulting in failure to determine some material issue of law *or whether there is a jurisdictional error in the decision reached due to extraneous considerations or the decision being informed by reasons that are perverse.*

9. It was held in Muhammad Feroze and others vs. Muhammad Jammat Ali *(2006 SCMR 1304) that "in regular second appeal, the jurisdiction of the High Court is limited to the extent of reference of question of law*

and not of facts." In Bashir Ahmed vs. Mst. Taja Begum and others (PLD 2010 SC 906) the august Supreme Court held that "it is failure of the trial court or the first appellate court to decide a material issue, which if decided who lead the court to a different conclusion that creates not a ground for exercise of jurisdiction under section 100 of CPC. It noted the following:

> *"We may note at this stage, that not all instances of a Court's failure to decide an issue will suffer for the purpose of allowing an appeal. It is only a failure to decide material issues which will enable an aggrieved party to invoke the jurisdiction of an appellate Court. The question of materiality, that is, whether or not an issue is of a material nature, will depend upon whether the ultimate decision of the Court of first appeal would have been different, if the omitted issue had been determined by it. Thus, in order to succeed in second appeal on ground (b) of subsection (1) of section 100, C.P.C., an appellant would have to show that the Court of first appeal would have reached a different conclusion, had it not failed to decide the issue of law or usage specified in ground (b) ibid."*

12. In light of the august Supreme Court's decisions in ***Squibb Pakistan Pvt. Limited*** and ***Messrs Rafeh Limited*** as well as the language of section 133(5) of the Ordinance, to the extent of proceedings under section 133, the High Court cannot alter the findings of fact as decided by the Tribunal. As the third appellate forum, the High Court can only consider the question of whether there has been misreading or non-reading of evidence such that it has resulted in a failure by the Tribunal to determine a material issue of law. Where the Tribunal has given a clear finding on a question of fact, it is not for the High Court to

second guess the finding upon reappraisal of evidence adduced before Commissioner (Appeals) and the Tribunal, even if the High Court disagrees with the finding of the Tribunal. The reason is simple. The statutory remedies provided under the Ordinance envisage the Tribunal as the final appellate forum for determination of facts. The jurisdiction of the High Court under section 133 of the Ordinance is even more limited than that under section 100 of CPC. Therefore, the High Court in exercise of jurisdiction under section 133 of the Ordinance will not sit in appeal over determinations of fact by the Tribunal and will under no circumstance appraise any record or evidence not produced before the Commissioner (Appeals) and the Tribunal.

13. Section 122(2) of the Ordinance prescribes the limitation within which an order for reassessment under section 122 of the Ordinance can be passed. Sub-sections 122(1) and (2), which are relevant for our present purposes, are reproduced below:

> ***122. Amendment of assessments****.— (1) Subject to this section, the Commissioner may amend an assessment order treated as issued under section 120 or issued under section 121, by making such alterations or additions as the Commissioner considers necessary.*
>
> *(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.*

14. As is clear from section 122(2)(a), an assessment may only be amended within five years from the end of the financial year in which the original assessment order of the taxpayer has been issued or deemed to have been issued. Once the specified period of five years has lapsed, the tax department is barred from amending an assessment under section 122 of the Ordinance. It is now settled law that a limitation period prescribed by a statute is to be treated as a mandatory provision. In the case of ***Khushi Muhammad Vs. Mst. Fazal Bibi (PLD 2016 SC 872)*** the august Supreme Court enumerated the significance of the law of limitation. It held while summarizing the salient features of the law of limitation, *inter alia,* that:

(a) Statutes of limitation by their very nature are strict and inflexible.

(b) There is no scope in limitation law for any equitable or ethical construction. Justice, equity and good conscience do not override the law of limitation.

(c) There is absolutely no room for the exercise of any imagined judicial discretion vis-a-vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction.

(d) There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence.

(e) *The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right.*

(f) *The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suitor;*

15. Relying on the decision of ***Khushi Muhammad*** the august Supreme Court in ***Additional Commissioner Inland Revenue Vs. Eden Builders Limited (2018 SCMR 991)*** observed in the context of section 122(2) that:

> *"6. From the ratio of the above judgment it can be seen that the law of limitation in so far as it regulates the period in which one party can avail a remedy against another is not to be lightly disturbed as the certainty created by limitation is necessary for the success of trade and business, the more so when that limitation governs tax matters. In the matters in hand, the respondents, at the time of filing their tax returns were aware that these tax returns may be amended in terms of section 122(5A) of the I.T.O., 2001 at any time up to five years from the date of filing of the tax return itself. Thus, their planning in terms of their possible amended and/or revised tax liability would extend for a period of five years from the date of filing of their respective tax returns. After the said five years were up, they could be sanguine that their tax return was now final and they could no longer be burdened with an additional demand. This means that a right related to the law of limitation came to vest in the respondents on the date of filing of their respective returns in terms of the provisions of the original section 122(2). However, the effect of the amendment brought about through the Finance Act, 2009 was to change that original date of commencement of limitation."*

16. Similarly, in the case titled ***Dr. Muhammad Javaid Shafi Vs. Syed Rashid Arshad (PLD 2015 SC 212)***, the august Supreme Court held that:

> *"Anyhow before proceeding further qua this proposition, we find it expedient to briefly touch upon the nature, the object and the significance of the law of limitation. From the various dicta/pronouncements of the superior court, it can be deduced without any fear of contradiction that such law is founded upon public policy and State interest. This law is vital for an orderly and organized society and the people at large, who believe in being governed by systemized law. The obvious object of the law is that if no time constraints and limits are prescribed for pursuing a cause of action and for seeking reliefs/remedies relating to such cause of action, and a person is allowed to sue for the redressal of his grievance within an infinite and unlimited time period, it shall adversely affect the disciplined and structured judicial process and mechanism of the State, which is sine qua non for any State to perform its functions within the parameters of the Constitution and the rule of law. The object of the law of limitation and the law itself, prescribing time constraints for each cause or case or for seeking any relief or remedy has been examined by the courts in many a cases, and it has been held to be a valid piece of legislation, and law of the land. It is 'THE LAW" which should be strictly construed and applied in its letter and spirit; and by no stretch of legal interpretation it can be held that such law (i.e. limitation law) is merely a technicality and that too of procedural in nature. Rather from the mandate of section 3 of the Limitation Act, it is obligatory upon the court to dismiss a cause/lis which is barred by time even though limitation has not been set out as a defence. And this shows the imperative adherence to and the mandatory application of such law by the courts. The said law is considered prescriptive and preventive in nature and is held to mean and serve as a*

> *major deterrent against the factors and the elements which would affect peace, tranquility and due order of the State and society. The law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law; as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole.*

17. Once it is understood that the limitation period prescribed by section 122(2) of the Ordinance is a mandatory provision, and the legislature has not conferred upon any adjudicatory forum provided under the Ordinance the authority to condone any delay in passing a re-assessment order beyond the limitation period prescribed in section 122(2), can Commissioner (Appeals) condone the delay in passing a re-assessment order or extend the period of limitation provided under section (2) under the garb of a remand order? There are three principles that are relevant for this discussion. One, a statutory authority can only exercise such authority as vested in it by statute and cannot claim any inherent power or authority. Two, the provisions of the statute must be construed such that they further the object of the statute as reflected from the language used in the text of the law. And three, what cannot be done directly, can also not be done indirectly. The purpose of the limitation provided in section 122(2) of the Ordinance, as explained

by the august Supreme Court, is to strike a balance between the power of the state to re-assess an assessment filed by the taxpayer under the self assessment mode employed by the Ordinance, and the right of the taxpayer to rest in peace that his tax assessment of a certain financial year predating the limitation period is a past and closed transaction and no new financial liability can be generated in relation to his tax affairs for such financial year. The Commissioner (Appeals) is vested with no authority to frustrate such scheme by remanding a dispute over a re-assessment order back to the Commissioner, to consider it afresh while being emancipated from the constraints imposed by section 122(2). To allow such remand order to stand, which has the effect of rendering the limitation period prescribed under section 122(2) of the Ordinance redundant, would tantamount to acquiesce in a fraud being played on the statute. If the tax authorities are incapable of assessing and reassessing the deemed assessment filed by a taxpayer within the prescribed period of five years after the end of the year in which it is passed (or deemed to be passed), so that the tax affairs of the taxpayer are clothed with the certainty envisaged by the Ordinance, they cannot be afforded a fresh lease to pass a reassessment order to vex a taxpayer under the garb of exercise of adjudicatory authority by Commissioner (Appeals). It is settled law that what cannot be done directly can also not be done indirectly.

18. The august Supreme Court, in its judgment titled ***Said Zaman Khan v. Federation of Pakistan (2017 SCMR 1249)*** elaborated upon the concept of *"mala fide"* in light of decisions of Pakistani superior courts, as well as comparable jurisdictions. The august Supreme Court categorized *mala fides* into two distinct categories; *mala fide* of law (malice in law) or *mala fide* of fact. The august Supreme Court, relying on definitions from legal dictionaries, as well as case law, observed as follows:-

> *82. All judicial and quasi-judicial forums for that matter even the Executive Authorities exercise only the powers conferred upon them by law so as to fulfill the mandate of such law and to achieve its declared and self-evident purpose. However, where any action is taken or order passed not with the intention of fulfilling its mandate or to achieve its purpose but is inspired by a collateral purpose or instigated by a personal motive to wrongfully hurt somebody or benefit oneself or another, it is said to suffer from malice of facts. In such cases, the seat of the malice or bad faith is the evil mind of the person taking the action be it spite or personal bias or ulterior motive. Mere allegations, in this behalf, do not suffice. Malice of fact must be pleaded and established at least prima facie on record through supporting material.*
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> *83. All persons purporting to act under a law are presumed to be aware of it. Hence, where an action taken is so unreasonable, improbable or blatantly illegal that it ceases to be an action countenanced or contemplated by the law under which it is purportedly taken malice will be implied and act would be deemed to suffer from malice in law or constructive malice. Strict proof of bad faith or collateral propose in such cases may not be required.*

Relying, *inter alia,* on the aforestated decision, the august

Supreme Court in its recent judgment titled ***Justice Qazi Faez Isa v. The President of Pakistan*** ***(PLD 2021 SC 1)*** observed as follows:-

> *48. The crux of our analysis will be focused on malice in fact since the petitioner has primarily levelled allegations of ulterior motives against the respondents. However, to present a complete picture of mala fides, two general points of importance from the above quoted observations need to be stated. First, that apart from the generally recognised category of actions driven by a foul personal motive described here as malice in fact, there is another category of reckless action in disregard of the law termed as mala fide in law. The first type of mala fide is attributed to a person whereas the second is levelled against the impugned action. While the former is concerned with a collateral purpose or an evil intention to hurt someone under the pretence of a legal action, the latter deals with actions that are manifestly illegal or so anomalous that they lack nexus with the law under which they are taken. Thus it becomes clear that malice in fact and mala fide in law have different ingredients, the former being comprised of factual elements with the latter being composed of legal features, that need to be established as such for the respective consequences to ensue. Secondly, it is clarified that an accusation of mala fide in law involves more than errors of misreading the record or non-application of the law or lack of proportionality in the impugned action. Instead, this is a serious allegation of wanton abuse or disregard of the law. However, when an ulterior motive to cause harm is proved then the repercussions of malice in fact follow. It is for this reason that a mere allegation that an action has been taken wrongly cannot be grounds to hold that such action suffers from mala fide in law or malice in fact.*

19. In view of the law discussed above, the answers to the questions framed in paragraph 6 can be summarized

as follows:-

(i) The jurisdiction of the High Court under section 133 of the Ordinance is appellate in nature, but as the third appellate forum provided under the Ordinance, the High Court cannot reappraise facts to second guess factual determinations rendered by the Tribunal even if it agrees with them. The Tribunal is the final adjudicator of facts and unless its misreading or non-reading of evidence results in its failure to determine a material issue of law that then comes to the High Court for adjudication, the High Court will be loath to engage in reappraisal of facts even for purposes of adjudicating a question of law.

(ii) The Ordinance creates no power to condone any delay in passing a re-assessment order beyond the period of limitation prescribed under section 122(2). The expiry of the limitation period creates a vested right in the taxpayer to treat the tax affairs for any year predating the limitation period under section 122(2) as a past and closed transaction and such vested right cannot be usurped by the tax department directly or indirectly.

(iii) Commissioner (Appeals) has no power or jurisdiction to indirectly extend the statutory prescribed period of limitation provided under section 122(2) by remanding the issue of re-assessment of tax returns filed by a taxpayer (as deemed assessment) to the Commissioner beyond the limitation period. Where an order for re-assessment passed within the limitation period is not sustainable in the eyes of law and the flaw inflicting it is that it defeats the Article

> 10A rights of a taxpayer having been passed in a perfunctory or mechanical fashion to meet the statutory limitation deadline, remanding the case back to the Commissioner to defeat the limitation period would tantamount to wanton abuse and disregard of the Ordinance, and such order would suffer from *mala fide* in law and liable to be set aside for being a fraud on the statute.

20. For the above reasons, we conclude that through the instant reference the applicant is seeking reappraisal of the fact of the Order-in-Original having been passed beyond the limitation as conclusively decided by the learned Tribunal. Consequently, the applicant has failed to identify a question of law that this Court can adjudicate in exercise of its appellate jurisdiction under section 133 of the Ordinance. The application is therefore **dismissed** for not being maintainable as no question of law has been brought before us to be adjudicated.

21. The office is directed to send a copy of this order to the learned Tribunal under the seal of this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

(BABAR SATTAR)
JUDGE

Saeed.