

**2012 PTD 1136**

**[Islamabad High Court]**

**Before Iqbal Hameed ur Rehman, C.J. and Noor-ul-Haq N. Qureshi, J**

**COMMISSIONER OF INCOME TAX/WEALTH TAX, COMPANIES ZONE,  
ISLAMABAD**

**versus**

**Messrs ISLAMABAD PUBLICATIONS (PVT.) LTD.**

Income Tax Appeal No.343 of 2000, dediced on 6th February, 2012.

**Income Tax Ordinance (XXXI of 1979)---**

---S.136---Appeal to High Court instead of Reference against order of Tribunal filed after promulgation of Finance Ordinance, 2000 which did not provide appeal but Reference to High Court---Maintainability---Impugned order dated 15-6-2000 was communicated to appellant on 31-7-2000, whereagainst he filed appeal on 28-9-2000, whereas Finance Ordinance, 2000 took effect on 1-7-2000, whereby no appeal was provided---Appellant filed appeal when neither Finance Act, 1997 nor Income Tax Ordinance, 1979 was in existence, thus he was required to file reference provided by Finance Ordinance, 2000---High Court dismissed appeal for being not maintainable.

Mian Rafi-ud-Din and 6 others v. The Chief Settlement and Rehabilitation Commissioner and 2 others PLD 1971 SC 252 ref.

Hafiz Munawar Iqbal for Appellant.

## ORDER

**NOOR-UL-HAQ N. QURESHI, J.**---The appellant/ Commissioner of Income Tax/Wealth Tax, Companies Zone, Islamabad has filed the instant appeal under section 136 of the Income Tax Ordinance, 1979, against the order dated 16-5-2000, and has requested to decide the following question of law:

"Whether on the facts and in the circumstances of the case the learned ITAT was justified to hold that tax under section 50(4A) of the Income Tax Ordinance, 1979 was not deductible on the commission paid as per C.B.R's. Circular No.25 of 1980 dated 23-9-1980 which in fact relates exclusively to section 50(4) and whereas section 50(4A) was subsequently inserted vide Finance Act, 1989?"

2. Arguments heard and record perused.

3. At the very outset, learned counsel appearing for the appellant when on query raised with regard to the earlier decision delivered by this Court in various tax appeals deciding question of law and in view thereof how the present appeal is maintainable on promulgation of the Finance Ordinance XXI of 2000 came into force on 1st July, 2000, when this appeal is preferred on 28-9-2000, where no procedure of appeal was provided by section 136 of the Ordinance XXI of 2000, challenging the said order passed by the Tribunal in ITA.

4. Learned counsel for the appellant emphasized that even the law was amended on the day of preferring appeal but since order passed by the Tribunal before this amended law, therefore, for preferring appeal, old law will be applicable, which provides forms of appeal instead of reference. Learned counsel for the appellant has referred decision of Hon'ble Supreme Court reported in "PLD 1971 SC 252" (Mian Rafi-ud-Din and 6 others v. The Chief ° Settlement and Rehabilitation Commissioner and 2 others), whereby their Lordship by discussing the interpretation of statutes have decided a question of law that if law altered during pendency of an action rights of the parties to be decided according to law that existed when action being and not that existing on date of judgment or order. The dictum laid down by the Hon'ble Supreme Court as referred above, in clear terms provides the pendency of an action, rights of the parties to be decided according to the said law, whereas in the instant case, the appellant has preferred the appeal after prolongation of Ordinance XXI of 2000, taken effect on 1st July, 2000, thereby no appeal is provided.

5. Hardly, the appellant can get benefit of Article 264 of the Constitution of Islamic Republic of Pakistan and section 6 of General Clauses Act, both are synonymous to each other. Article 264 and section 6 of General Clauses Act, both providing effect of repeal of any enactment made or to

be made, then, unless a different intention appears, the repeal shall not revive anything in force or existing at the time when repeal take. effect, or to affect the previous operation of any enactment so repealed or anything done, suffered there under as well as other similar type of rights.

6. In the instant appeal, a very simply legal question is involved that on promulgation of Finance Ordinance XXI of 2000, whether at the time of preferring appeal the Finance Act, 1997 was existing, as such, appellant should have seek advantage of Article 264 of the Constitution and section 6 General Clauses Act or even section 136 of the Income Tax Ordinance, 1979 under which appeal is preferred provides reference instead of appeal against order impugned.

7. The reply is too simple that the order passed by Tribunal on 16-5-2000, same said to have been communicated in the office of appellant on 31-7-2000 and appeal was preferred on 28-9-2000. At that time, Finance Act XXII of 1997 was neither in existence nor Income Tax Ordinance, 1979. Then how can appellant prefer the instant appeal after promulgation of Finance Ordinance XXI of 2000, therefore, in our view the appeal in its present form in not maintainable and the appellant should have follow the procedure of filing reference as laid down under section 136 of Ordinance XXI of 2000 and the view formed by us in tax Appeals Nos. 128 of 2000, 152/200, 123/2000, 1418/2000, 15112000, 180/2000, 211/2000, 212/2000, and 292/2000.

8. Therefore, the appeal since not maintainable after promulgation of Ordinance XXI, 2000 where reference is provided, which too, on making an application to the Tribunal referring the question of law involved therein and by making a request to onward the reference be made to the High' Court, which procedure has been violated by the appellant while preferring the appeal. Hence, the same is dismissed in limine with no order as to costs.

S.A.K./56/IsI

Appeal dismissed.