

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Tax Appeal 128/2000

The Commissioner of Income Tax/Wealth Tax.
Titled Vs

M/s Dreamland Motels (Pvt) Limited

- (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).

J. M. Hash.
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.128/2000.

THE COMMISSIONER OF INCOME TAX/WEALTH TAX
APPELLANT
PETITIONER

VERSUS

M/S DREAMLAND MOTELS (PVT.) LTD
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

Mr. Ayyaz Shaukat 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 136 of the Income Tax
Ordinance, 1979, against the order dated 11.4.1996
and has requested to decide the following question of
law:-

*Whether the Learned ITAT was
right in holding that action u/s
66A cannot be taken even if an
order which is erroneous and
prejudicial to the interest of
revenue is passed merely for the
reasons that the assessing officer
was apparently satisfied with the
explanation of the assessee to
notice u/s 62 and has not therefore
taken action u/s 13 of the Income
Tax Ordinance, 1979?*

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 its counsel ever cared about it to comply the Office Objection within the period stipulated.

4. The learned counsel for the appellant however not able to reply the query raised by the Court regarding date of receipt of Tribunal's order mentioned in handwriting, which appears to be subsequently added to drag the appeal within time limit. The appellant himself in Para-3 of the appeal contended that limitation is expiring on 22.08.1997. While following the provisions of Section 136 of the said Ordinance, 1979, introduced new enactment of filing appeal mandatory within 30 days of the date upon which an aggrieved person or the Collector is served with notice of an order under Section 135 as provided by the Finance Act, 1997, which continued till promulgation of the Finance Ordinance, 2000 known as Ordinance Number XXI of 2000, whereby again the same provisions in which addition of subsection 10 was introduced, which has no nexus with the present subject for filing of the reference or the appeal.

5. Learned counsel for the appellant not able to clarify such delay apparently on their part even the

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date of receiving of order, in the office shown as 24.06.1997, when Commissioner was required to prefer appeal to the High Court within 30 days mandatory, which too had not been exhausted and it was going to expire on 24.07.1997 but the appeal seems to have been preferred on 20.08.1997.

6. For the convenience, amended Section 136 is reproduced herein below:-

Appeal to High Court. (1) *An appeal shall lie to the High Court in respect of any question of law arising out of an order under Section 135.*

(2) *The appeal under this section shall be filed within sixty days of the date upon which an assessee or the Commissioner is served with notice of an order under Section 135.*

(3) *Where an appeal under subsection (1) is filed by the assessee, it shall be accompanied by a fee of one hundred rupees.*

(4) *An appeal filed under this Section shall be heard by a Bench of not less than two Judges of the High Court.*

(5) *The High Court upon hearing of an appeal under this section shall decide the question of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal, which shall pass such orders as are necessary to dispose of the case conformably such judgment.*

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(6) Subject to subsection (7), notwithstanding that an appeal has been filed under this section, tax shall, unless recovery thereof has been stayed by the High Court, be payable in accordance with the assessment made in the case as modified by the order of the Appellate Additional Commissioner or, as the case may be, the Appellate Tribunal.

(7) Where recovery of tax has been stayed by the High Court by an order, such order shall cease to have effect on the expiration of a period of six months following the day on which it is made, unless the appeal is decided, or such order is withdrawn, by the High Court earlier.

(8) The cost of the appeal shall be in the discretion of the High Court."

7. That as general principle of law if delay occurs on the part of any party, such condonation of delay is required to be sought through making an application under relevant provision of Limitation Act or any other provision, if provided, by the special enactment in view of legal principle already sketched, that each day of delay has to be explained plausibly with reason duly supported by affidavit.

8. It will be necessary to distinguish the respectable period for clarifying the doubt about the filing of reference or appeal against the order passed under Section 135 of Act 1997 on receiving notice by the aggrieved person or Collector and reference on receiving the notice of refusal by the Appellate Tribunal on making an option under Section 136(1) of

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the ordinance XXXI of 1979 or re-promulgated ordinance XXI of 2000 (Finance Ordinance, 2000) as the case may, the dates and periods of promulgation of such enactment are submitted herein below:-

- (A) ***Income Tax Ordinance, 1979 came into force on 1st July 1979.***
- (b) ***Finance Act XXII of 1997 was promulgated on 1st July 1997***
- (c) ***The Finance Ordinance XXI of 2000 promulgated on 1st July, 2000.***

9. Therefore, any transmute by overlapping the period in preferring reference or appeal whatever the case may be, invalidates it beyond the law. And any such institution under no circumstances can be considered as legal practice, as such, same is incurable under the scheme of law.

10. In the instant appeal, in Para-3, it is rather admitted by the appellant himself that he though received the order on 24.6.1997, but instead of preferring an appeal within a period stipulated by law, they with slackness only shifted the burden from their shoulders and lethargically filed the appeal even not confronted the relevant provisions of law, which provides the specific period for preferring the appeal.

11. Therefore, under the circumstances, when the party i.e. the appellant themselves sit over their own rights with such slackness on their part,

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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.

11. From the perusal of the appeal it is evident that the present appellant had filed the instant appeal on 20.08.1997 against the order of Income Tax Appellate Tribunal dated 11.4.1996, 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 07.02.2000 after removing the objection i.e. after about two and half years of the passing of period of limitation, as the appellant in Para-3 of the appeal, himself has mentioned that limitation under Section 136 of the Income Tax Ordinance, 1979 expires on 22.8.1997 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

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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

Blue Slip added.

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