Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

TR No.65/2007

Commissioner of Income Tax

Versus

M/s Ghazi Brotha Taraqiati Idara

Applicant by	:	Mr Arshad Mehmood, Advocate.
Respondent by	:	Mr Saeed Ahmed Zaidi, Advocate.
		Mr Tahir Niaz, Director Legal, CTO, Islamabad.
Date of Hearing	:	**10-03-2022**

ATHAR MINALLAH, C.J.- Through this Reference, the Commissioner of Income Tax (*hereinafter referred to as the* **"Applicant"**) has proposed for our consideration questions of law stated to have arisen out of order, dated 22-08-2006, passed by the learned Income Tax Appellate Tribunal, Islamabad (*hereinafter referred to as the* **"Tribunal"**).

2. The facts, in brief, are that M/s Ghazi Brotha Taraqiati Idara (*hereinafter referred to as the* **"respondent Company"**) is a juridical person incorporated under section 42 of the Companies Ordinance, 1984, as a non-profit organization. It is limited by guarantee and was incorporated on 08-10-1995. The original

assessment order was passed by the assessing officer on 08-01-1999. The appeal preferred by the respondent Company was allowed by the Commissioner of Income Tax (Appeals) vide order-in-appeal, dated 17-12-1999. Subsequently, the appeal preferred by the Department was allowed and disposed-of in the following terms.-

> *"We are of the view that the profits on Bonds are not a business income earned by the assesee during the period relevant to assessment year under consideration. In our view, this income falls u/s 30, as income from other sources and assessable under the said provision with deduction allowance u/s 31. As a result of our findings above, we vacate the findings of both the two officers below and direct the assessing officer to assess the profit on Bonds u/s 30 of the Ordinance. No other issue is pressed."*

3.   It is noted that the learned Tribunal had decided the aforementioned appeal vide order, dated 07-06-2001, but neither assessment proceedings were concluded nor an appeal effect order was passed within the prescribed time. However, the appeal effect order was passed vide order, dated 06-04-2005. The appeal preferred by the respondent Company was allowed vide order-in-appeal, dated 27-06-2005. The appeal effect order was set aside on the sole ground of having been passed beyond the prescribed time of limitation. The learned Tribunal also dismissed the appeal filed by the Applicant Department vide order, dated 22-08-2006.

4.   The learned counsel for the applicant Department has appeared alongwith Mr Tahir Niaz, Director (Legal). They have been heard at length. However, they have not been able to persuade us that the concurrent findings rendered by two competent forums suffer from any legal infirmity. Section 66 of the repealed Income Tax Ordinance, 1979 (*hereinafter referred to as the* ***"Ordinance of 1979"***) had explicitly prescribed the limitation period for passing an assessment order. Likewise section 124 of the Income Tax Ordinance, 2001 has also specified the period of limitation for passing an order. The prescribed limitation periods in both the fiscal statutes are mandatory. In the case in hand, the learned Tribunal had passed the order on 07-06-2001, while the assessment order pursuant thereto was passed on 06-04-2005 i.e. after considerable delay from lapse of the prescribed statutory limitation period. The Commissioner of Income Tax (Appeals) and the learned Tribunal have correctly interpreted the statutory provisions. We have not been able to persuade ourselves that the well-reasoned orders passed by two competent forums suffer from any legal infirmity. As already noted, the order, dated 06-04-2005, was passed beyond the prescribed limitation period and, therefore, it was without lawful effect and void.

5.   We, therefore, answer the proposed questions of law in the light of our above discussion.

5.   A copy of this order is directed to be sent to the Registrar

of the learned Tribunal under the seal of this Court.

(CHIEF\JUSTICE)

(BABAR SATTAR)
JUDGE

Luqman Khan/*