

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Writ petition no.1421/ 2021

Sea and Land Drilling Contractor Inc.

versus

Pakistan through the Secretary Revenue and *Ex-officio* Chairman,
Federal Board of Revenue, Islamabad and 2 others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
7	06.09.2022	Syed Farid Bukhari, Advocate for the petitioner in connected WP no.1899/ 2019. Mr. Adeel Wahid, Advocate for the petitioner in WP no.2295/2019 and WP no. 810/ 2020. Mr. Saeed Ahmed Zaidi, Advocate for the respondent in respective connected petitions. Barrister Abdul Wahab and Barrister Qasim Duggal, Advocates for FBR. Mr. Babar Bilal, Advocate for the respondent in WP no.1899/2019, WP no. 2295/2019 and WP no. 810/2020.

By this common order, writ petitions no. 1421/2021, 1486/2016, 1899/2019, 2295/2019 and 810/ 2020 are being disposed of.

2 After hearing the learned counsels at some length, it appears to me that the respondents have not demonstrated sufficient reasons to depart from the decision in the case titled Dowell Schlumberger (Western) S.A. versus Pakistan through the Secretary Revenue FBR (WP no.1183/2018), which addresses the core question of law raised in these petitions, namely, whether section 74(10) of *the Income Tax Ordinance, 2001*, is to be applied to section 122(2) or not, and I find that the opening words of section 74(10) – ‘in this Ordinance’ – are sufficiently wide to conclude that it is to be so applied.

3 In this and the connected cases, it is an admitted position that all the petitioners held approvals for special tax years from 1st of January to 31st of December for the relevant periods, that the relevant tax years for which the show cause notices for amendment of assessments were issued were special tax years, and that the show cause notices were issued after the 31st of December of the special tax year on the assumption that the financial year ran up to the 30th of June in the next calendar year. The impugned show cause notices were issued beyond 5 years of the expiry of the relevant special tax year, and the tax

department wants to add another 6 months to the limitation period arguing that the use of the words ‘financial year’ in section 122(2) means that, for the purposes of section 122(2), the corresponding financial year is to run for another 6 months after the expiry of the corresponding special tax year. Even if it is assumed that there is any ambiguity while reading sections 122(2) and 74(10) together, as sought to be suggested by the learned counsels for the respondents but which is not apparent, it is settled law that the ambiguity is to be resolved in favour of the taxpayer.

4 The submission by the respondents’ counsels resting on the phrase ‘*unless the context otherwise requires*’ in section 70(4) does not help them, for the said phrase calls for the context being shown to require otherwise, which however has not been so shown. The further submission resting on the concluding phrase ‘*commencing during the financial year*’ in section 70(4) to argue that only a special tax year commencing during a financial year is catered for, is also not tenable as that phrase is relatable only to the immediately preceding words ‘*a transitional tax year*’ due the absence of a comma before the word ‘commencing’ – the disjunctive ‘or’ creates a break between the two phrases ‘*include a special tax year*’ and ‘*a transitional tax year commencing during the financial year*’.

5 Resultantly, adopting respectfully the reasoning in paragraph 7 of the aforesaid judgment of the Hon’ble Single Bench of this Court, and for the reasons given herein, these petitions are **allowed** and the impugned show cause notices are set aside.

(Sardar Ejaz Ishaq Khan)
Judge