

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.6-L of 2023

[Against the judgment dated 20.10.2022, passed by the Lahore High Court, Lahore in ITR No.63041 of 2022]

Allied Bank Limited. *...Petitioner (s)*
Versus
The Commissioner of Income Tax, Lahore etc. *...Respondent(s)*

For the Petitioner(s) : Dr. Ikram ul Haq, ASC
For the Respondent(s) : Ch. Muhammad Shakeel, ASC
Naveed Akhtar, DC
Assisted By : Muhammad Hassan Ali, Law
Clerk, Supreme Court.
Date of Hearing : 23.05.2023

ORDER

Syed Mansoor Ali Shah, J:- The legal question before us is as to whether the powers of the Commissioner under Section 122(5A) of the Income Tax Ordinance, 2001 ("**Ordinance**") can be delegated to the Additional Commissioner Inland Revenue under Section 210 of the Ordinance.

2. Brief facts of the case are that the petitioner furnished its income tax return for the tax year 2013, which was deemed as an assessment order under Section 120 of the Ordinance. Subsequently, a show cause notice was issued to the petitioner on 16.01.2014 by the Additional Commissioner Inland Revenue under Section 122(5A) of the Ordinance, along with notice dated 16.04.2014 under Section 122(9) of the Ordinance. The deemed assessment order was then amended vide order dated 28.02.2014. Aggrieved of the same, the petitioner filed an appeal before the

Commissioner Inland Revenue, Appeal-I, Lahore which was partly allowed vide order dated 16.06.2014, however, with regards to the legal question before us, it was dismissed. Both the petitioner and the department then filed cross appeals before the Appellate Tribunal Inland Revenue, Lahore, which were disposed of on merits vide order dated 09.06.2022, however, on the legal question mentioned above, the appeal of the petitioner was again dismissed. The petitioner then filed an Income Tax Reference under Section 133 of the Ordinance and articulated the above legal question in the following manner:

- I. Whether the Tribunal was correct in law in endorsing assumption of jurisdiction by [the] Additional Commissioner under section 122(5A) of the Income Tax Ordinance?
- II. Whether [the] legal obligation of "consideration" imposed by the legislature on [the] Commissioner in section 122(5A) of [the] Income Tax Ordinance, 2001 can be delegated to any other authority below the rank of a Commissioner?

The Income Tax Reference was decided against the petitioner vide the impugned judgment dated 20.10.2022, hence, the instant petition for leave to appeal.

3. The learned counsel for the petitioner has argued that the deemed assessment is made under Section 120 of the Ordinance by the Commissioner and the amendment under Section 122(5A) of the Ordinance is based on the said assessment if it is considered that it is erroneous or prejudicial to the interest of revenue, and therefore, only the Commissioner could amend the said order in terms of Section 122(5A) of the Ordinance and the said power cannot be delegated to the Additional Commissioner. He further submits that the discretion of the Commissioner to "consider" that the assessment order is erroneous in so far as it prejudicial to the interest of revenue cannot be delegated.

4. On the other hand, the learned counsel for the department submits that the authority to delegate the powers of the Commissioner under Section 122(5A) is specifically provided

for under Section 210(1A) of the Ordinance and further refers to Section 211 of the Ordinance to point out that the powers and functions of the Commissioner delegated under Section 210 of the Ordinance shall be treated as having been exercised and performed by the Commissioner. He also referred to the definition of "Commissioner" provided in Section 2(13) of the Ordinance which includes any other authority vested with all or any of the powers or functions of the Commissioner. Therefore, according to the learned counsel, under Section 210 of the Ordinance the powers of the Commissioner can be delegated to the Additional Commissioner Inland Revenue, the exercise of which would be treated as having been exercised and performed by the Commissioner.

5. We have heard the learned counsel for the parties and have gone through the impugned judgment of the High Court and the record of the case. The only question that requires determination is as to whether the powers exercised by the Commissioner under Section 122(5A) of the Ordinance to amend or further amend an assessment order, if he considers that the assessment order is erroneous in so far as it is prejudicial to the interest of the revenue, could be delegated to the Additional Commissioner under Section 210 of the Ordinance. The answer to the said question can be ascertained simply through a conjunctive reading of Sections 2(13), 122(5A), 210 and 211 of the Ordinance.

6. Section 122(5A) of the Ordinance stipulates that subject to sub-section (9), which requires that the taxpayer must be provided with an opportunity to be heard, the Commissioner may amend, or further amend, an assessment order if he considers the assessment order as erroneous in so far as it is prejudicial to the interest of revenue. Section 210(1) of the Ordinance specifically empowers the Commissioner to delegate all or any of the powers or functions conferred upon or assigned to the Commissioner under the Ordinance to any officer of Inland Revenue subordinate to the Commissioner, except the power of delegation. Importantly, Section 210(1A) removes any ambiguity as to the power of the Commissioner to delegate his powers provided under Section 122(5A) by stipulating that the Commissioner shall not delegate

the powers of the amendment of assessment contained in Section 122(5A) to an officer of Inland Revenue below the rank of Additional Commissioner Inland Revenue. Section 211(1) of the Ordinance then further fortifies that where by virtue of an order under Section 210 of the Ordinance, an officer of the Inland Revenue exercises a power or performs a function of the Commissioner, such power or function shall be treated as having been exercised or performed by the Commissioner. This is further aided by Section 2(13) of the Ordinance which defines "Commissioner" as a person appointed as such under Section 208 and includes any other authority vested with all or any of the powers and functions of the Commissioner.

7. The learned counsel for the petitioner has attempted to interpret and read the above provisions in isolation and has argued that as a general principle of propriety, the Additional Commissioner, being junior to the Commissioner, cannot revise an order passed by the Commissioner. We are afraid that we cannot agree with the said submission of the counsel in view of the above clear provisions of the Ordinance. The legislature has specifically empowered the Commissioner under Section 210 of the Ordinance to delegate all or any of the powers or functions conferred upon him under the Ordinance, other than the power of delegation, to any officer of Inland Revenue subordinate to him. Any ambiguity regarding delegation of the powers provided under Section 122(5A) is clearly dealt with under Section 210(1A) of the Ordinance which specifically provides that the said powers to amend an assessment order cannot be delegated to an officer of Inland Revenue below the rank of Additional Commissioner Inland Revenue. Section 211(1) of the Ordinance then declares and affirms that where an officer of Inland Revenue exercises or performs such delegated powers or functions, such power or function shall be treated as having been performed by the Commissioner himself. This is further supported by the definition of "Commissioner" provided in Section 2(13), as pointed out above. It is well settled that a literal approach is to be adopted while interpreting fiscal or taxing statutes, and the Court cannot read into or impute something when the provisions of a

taxing statute are clear. While interpreting a taxing statute, the Court must look to the words of the statute and interpret it in light of what is clearly expressed therein, and it cannot imply something which is not expressed or import provisions in the statute so as to support any assumed deficiency.¹

8. According to De Smith's Judicial Review², even though, based on the maxim *delegatus non potest delegare*³, it is a general principle of public law that where the legislature vests powers in a person, indicating that trust is being placed in his individual judgment and discretion, that person is *prima facie* required to exercise that power personally, however, the said principle is not absolute and yields to the language, scope and object of the statute conferring the said powers. A legislation may expressly provide for a statutory procedure to delegate such powers vested in an administrative authority, after the exercise of which, the delegate can then exercise the delegated power in their own right. The above express provisions in the Ordinance clearly allow the Commissioner to delegate his functions and powers, which includes the power to "consider" and decide, under Section 122(5A) to the Additional Commissioner, and consequently, they must be read as such. Therefore, the argument of the learned counsel for the petitioner with regards to delegation of the discretion of the Commissioner is devoid of force.

9. We have also observed that the question of law raised in the instant petition has also already been dealt with by a 3-Member Bench of this Court in an unreported judgment rendered in *The Bank of Punjab*⁴, wherein the assumption of jurisdiction by

¹ Pearl Continental Hotel v. Government of NWFP, 2010 PTD 2018; Commissioner of Income Tax v. Khurshid, 2016 PTD 1393; Hirjina v. Commissioner of Sales Tax, 1971 PTD 200.

² De Smith's Judicial Review 304-314 (Sweet and Maxwell, 6th ed. 2007); *Legal briefing – Delegations, authorisations and the Carltona principle*, Australian Government Solicitor (June 16, 2022), <https://www.ags.gov.au/publications/legal-briefing/lb-20220616#fn4>.

³ A delegate may not delegate to another the power which has been delegated to them.

⁴ The Bank of Punjab v. The Commissioner Inland Revenue, CA Nos. 1669 to 1692 of 2013, decided on 06.02.2019. We have noted with concern that the learned counsel for the petitioner had also appeared for the petitioner in the said case, however, he did not bring this to our notice at the time of arguing the matter.

the Additional Commissioner under Section 122(5A), through delegation, has been affirmed. The said judgment upholds the view taken by the various High Courts in *Pak Telecom*⁵, *Pakistan Tobacco*⁶ and *Shell*⁷. It was also noted therein that a redressive remedy against an order passed by the Additional Commissioner under Section 122(5A) is available under Section 127 of the Ordinance before the Commissioner (Appeals), therefore, there is no prejudice caused to an aggrieved party. Consequently, the said judgment, being binding, also settles the matter and must be adhered to, including for the reasons provided for therein.

10. In view of the above, we see no reason to interfere in the well-reasoned order of the High Court. Therefore, leave is refused and this petition is dismissed.

JUDGE

Bench-IV
Islamabad
23.05.2023
APPROVED FOR REPORTING
Rabbani*/

JUDGE

⁵ Pak Telecom v. FBR, (2013) 108 TAX 125.

⁶ Pakistan Tabacco v. Additional Commissioner, (2013) 107 TAX 29.

⁷ Shell (Pakistan) v. Pakistan, 2013 PTD 1012.