

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar
Mrs. Justice Ayesha A. Malik
Mr. Justice Aqeel Ahmed Abbasi

CIVIL PETITION NO.687-L OF 2024

[Against order dated 31.01.2024 passed by the Lahore High Court, Lahore in ITR No.77169 of 2022]

Commissioner Inland Revenue, Corporate Zone,
Regional Tax Office, Faisalabad ...Petitioner(s)

Versus

M/s National Public Welfare Society, Jinnah ...Respondent(s)
Colony, Faisalabad and another

For the Petitioner(s) : Mrs. Kausar Parveen, ASC

For the Respondent(s) : Mr. M. Amir Sohail, ASC

Date of Hearing : 23.04.2025

JUDGMENT

AYESHA A. MALIK, J.- This Civil Petition is directed against order dated 31.01.2024 passed by the Lahore High Court, Lahore (**High Court**) whereby the income tax reference filed by the Petitioner-Commissioner Inland Revenue was dismissed.

2. The basic contention of the counsel for the Petitioner is that Section 2(36) read with Section 100C of the Income Tax Ordinance, 2002 (**the Ordinance**) read with SRO No.754 (I)/2016 dated 15.08.2016 (**the SRO**) was misconstrued by the High Court. The taxpayer is a welfare society and the relevant tax year is 2019. The taxpayer filed their return on 26.12.2019 after which a show cause notice was issued on 12.02.2021 under Section 122(9) read with Section 122(5A) of the Ordinance stating therein that the taxpayer was not entitled to tax credit as they had not obtained the relevant approval required under Section 2(36) of the Ordinance given that the validity of their existing approval dated 05.06.2007 expired in the year 2010 in terms of the SRO. The assessment order dated 01.03.2021 and the appeal before the Commissioner decided the matter against the taxpayer maintaining the contention that they did not have a valid approval under Section 2(36) of the Ordinance. The Tribunal, however,

agreed with the contention of the taxpayer that it had a valid approval issued by the Commissioner for which the condition of three years as stipulated by the SRO would commence from 2016 and not retrospectively from 2007. The High Court has maintained the decision of the Tribunal for the same reasons.

3. We have examined the contention of the counsel for the Petitioner, however, find little force in it. The matter in issue simply relates to the retrospective applicability of the SRO. The said SRO was issued on 15.08.2016 under Section 237(1) of the Ordinance which essentially made amendments to the Income Tax Rules, 2002 (**the Rules**). The relevant rule in this case is Rule 214 of the Rules which originally provided that the approval granted under Rule 212 of the Rules will remain in force unless withdrawn under Rule 217 of the Rules. The approval under Rule 212 of the Rules is essentially with reference to the approval sought by the non-profit organization for the purposes of Section 2(36) of the Ordinance. The amendment brought to Rule 214 of the Rules by way of the SRO is that the approval given under Rule 212 of the Rules shall remain in force for the *subsequent three years* unless withdrawn under Rule 217 of the Rules whichever is earlier. Hence, the question before us is simply whether Rule 214 of the Rules as amended by the SRO will apply retrospectively.

4. A bare reading of Rule 214 clarifies that it will apply for the *subsequent three years* meaning that it will apply prospectively as the words *subsequent three years* do not suggest that this amendment will apply retrospectively. Admittedly, the SRO does not contain any provision which suggests that the said SRO will apply retrospectively. Under the circumstances the contention of the Petitioner that the approval obtained by the taxpayer in the year 2007 is no longer valid, as it expired in 2010, on account of the SRO, is misconceived as the argument suggests a retrospective application of the SRO. This goes against the settled law that retrospective application of the law cannot be made unless specifically provided for, particularly in tax cases.¹ Therefore, we find that the SRO was issued on 15.08.2016, the period of three years will be counted subsequent thereof which means that the approval granted in 2007 expired in August 2019. Consequently,

¹ Commissioner Inland Revenue v. Millat Tractors Ltd. (2024 SCMR 700).

the taxpayer did have the relevant approval necessary for claiming tax credit for the tax year 2019 and was entitled to it.

5. Under the circumstances, we find no case for interference is made out. This Civil Petition is, therefore, dismissed and leave refused.

JUDGE

JUDGE

Islamabad
23.04.2025
'APPROVED FOR REPORTING'
Azmat/*

JUDGE