

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui

Civil Petition No. 862 of 2024

*(Against the judgment dated 18.11.2023 of
the Islamabad High Court, Islamabad
passed in I.T.R.No.60/2015)*

*Commissioner Inland Revenue, (Special Zone for Builders
and Developers) Regional Tax Office, Islamabad. ... Petitioner*

Versus

M/s Khudadad Heights, Islamabad. ... Respondent

For the Petitioner: Dr. Farhat Zafar, ASC.
Dr. Ishtiaq Ahmed Khan,
Director-General (Law), FBR.

For the Respondent: Not represented.

Date of Hearing: 27.02.2025.

ORDER

Muhammad Shafi Siddiqui, J. The question proposed is about '*definite information*' required for the amendment of the assessment under section 122 of the Income Tax Ordinance, 2001 ('**the Ordinance**'). It started via notice under subsections 1, 5 and 9 of section 122 of the Ordinance, 2001 issued to the assessee for the tax year 2006, finalized under section 120 of the Ordinance by accepting a declared version. The cause is a bank statement alone, on the basis of which proceedings commenced.

2. The explanation provided by the taxpayer was found unsatisfactory and the assessing officer re-assessed the net income of the taxpayer. Being aggrieved of such treatment, the taxpayer filed an appeal before the Commissioner Inland Revenue (Appeals-I), Islamabad ('**the Commissioner**') and was able to successfully established his response to

some extent. The Commissioner decided the appeal on 28.12.2011. Both, the department and the taxpayer found themselves aggrieved of the order of the Commissioner filed appeal/cross-appeal before the Appellate Tribunal Inland Revenue Islamabad Bench-I, Islamabad ('**the Tribunal**'). The Tribunal heard the appeals and after careful examination of the record, law and the arguments accepted the appeal of the taxpayer, whereas, the departmental appeal was rejected *vide* order dated 13.11.2014. The Income Tax Reference was then preferred by department before the Islamabad High Court, Islamabad which gave detailed analysis of the questions raised in the reference jurisdiction.

3. The question posed before us is all about '*definite information*' with the department. The reference was decided based on judgments and the last ones being the case of Commissioner Inland Revenue Zone-I RTO, Rawalpindi v Messrs Khan CNG Filling Station, Rawalpindi and others¹ and Commissioner Inland Revenue, RTO, Bahawalpur v. M/s Bashir Ahmed (deceased) through L.Rs². The judgment of the High Court discussed the effects of section 65 of the Income Tax Ordinance, 1979 ('**the Ordinance of 1979**') as well as the effect of section 122(5) of the Ordinance.

4. The contention of the learned counsel for the petitioner before us was that the judgment of this Court relied upon by the Division Bench of the High Court pertained to the law which was in force upto and until 2001 when the Income Tax Ordinance, 2001 was introduced, which provided a different scheme in relation to '*definite information*' and hence the judgments which were passed while the Ordinance of 1979 was in vogue were misapplied.

¹ 2017 SCMR 1414.

² 2021 SCMR 1290.

5. We have heard the learned counsel and perused the material available on record. For a comparative analysis of the two *pari materia* provisions of Income Tax Ordinance, 1979 and Income Tax Ordinance, 2001, are reproduced as under:

Income Tax Ordinance, 1979	Income Tax Ordinance, 2001
<p>65. Additional assessment.</p> <p>(2) No proceedings under sub-section (1) shall be initiated unless definite information has come into the possession of the Deputy Commissioner and he has obtained the previous approval of the Inspecting Additional Commissioner of Income Tax in writing to do so.</p>	<p>122. Amendment of assessments.</p> <p>(5) An assessment order in respect of a tax year, or an assessment year, shall only be amended under sub-section (1) and an amended assessment for that year shall only be further amended under sub-section (4) where, on the basis of audit or on the basis of definite information the Commissioner is satisfied that.</p> <p>(i) any income chargeable to tax has escaped assessment; or</p> <p>(ii) total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or</p> <p>(iii) any amount under a head of income has been mis-classified.</p>

6. We have carefully gone through the judgment of *Khan CNG Station* wherein para 10 the Bench considered two provisions and was of the view that the procedure prescribed for amending assessment under the repealed law was not the same as in the present law. Indeed, the procedural aspects have been distinguished but with commonality of object of '*definite information*'. Earlier for a '*definite information*' the Deputy Commissioner was saddled with responsibility if such definite information came into his possession and if he had obtained the approval of the

Inspecting Additional Commissioner, whereas, in the regime of 2001 Ordinance the '*definite information*' was either left to the audit analysis which may allow Commissioner to adjudge the following, i.e., (i) any income chargeable to tax has escaped assessment; or (ii) total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or (iii) any amount under a head of income has been mis-classified. Certainly there is no audit claim and even no notice under section 111 of the Ordinance is issued and similarly statement of account alone cannot be a basis to form any of the three routes provided in the later part of section 122(5). *Khan CNG Station* case is based on the volume of natural gas which was ascertainable, as based on mathematical formula which was applied in the case, whereas, on the contrary, the statement of account on the basis of which the show cause notice was issued could not form a '*definite information*' about the income of tax payer as demonstrated by the Commissioner in its order dated 28.12.2011. Indeed, when it comes to a '*definite information*' about the volume of natural gas the department formed a view to which there was no denial hence the concept of '*definite information*' was correctly applied, however, it varies from case to case. In *Khan CNG Station* case the source was volume of natural gas which was mathematically ascertainable whereas in the instant case bank account and transactions therein do not necessarily form definite income of the assessee/taxpayer. This is exactly what is explained by the High Court in para 10 as under:

10. **M/s Khan CNG** therefore qualifies the scope of "definite information" as enumerated in **Chappal Builders** and the subsequent decisions by creating a carve out to the requirement that "definite information" is information so definite that it suffices in engendering a reasonable or definite belief without the need for such information to be subjected to further analysis, scrutiny or logical deduction. The Supreme Court clarified in **M/s Khan CNG Filling Station** that application of predetermined formula or

calculation to definite information that is merely to be inserted into such formula to produce a definite outcome will not fall foul of the definition of "definite information" or the prohibition that such information must not require further processing or assessment.

The distinguishing aspects of *Khan CNG Station* case came in consideration before this Court in the case of Commissioner Inland Revenue, RTO, Bahawalpur v. M/s Bashir Ahmed (deceased) through L.Rs (supra). Bashir Ahmed case was based on scrutiny of a deemed assessment order wherein an amount of agriculture income of Rs.500,000 was shown whereas an immovable property worth Rs.56,00,000/- was shown to have been purchased in the same tax year, which too was not found to be "definite". The said case also devoid of a notice under section 111 of the Ordinance. Thus, the effect of '*definite information*' is to be noticed on a case to case basis and the source of information would then consequently decide as to the information being definite or otherwise.

7. In the instant case the re-assessment proceedings triggered on the basis of bank statement of the taxpayer. All transactions therein not necessarily demonstrate the income of the taxpayer/assessee hence unless it is established that these statements and/or entries therein disclose information of income which is '*definite*', the subject instrument cannot be applied as being one having '*definite information*'. Neither the Commissioner nor the Tribunal and the learned High Court were of the view that all credit entries in the statement of account disclosed the income of the assessee and hence it does not constitute '*definite information*'. Indeed, the Tribunal is the last fact finding forum which question could neither be raised in the reference jurisdiction nor before this Court.

8. With this understanding of law, we are not inclined to interfere with the impugned judgment of the High Court. Therefore, leave to appeal is declined and consequently this petition is dismissed.

Chief Justice

Judge

Islamabad:
27.02.2025

Approved for Reporting

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