

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Irfan Saadat Khan

Civil Petition No. 2100/2024

Against the order dated 27.02.2024
passed by Lahore High Court, Lahore in
ITR No. 41034/2017

M/s Muhammad Faisal Prop, F.A. Traders, Lahore ...Petitioner(s)

VERSUS

Commissioner Inland Revenue, Zone-II, RTO-II, ...Respondent(s)
Lahore

For the Petitioner(s): Mr. Hassan Kamran Bashir, ASC

For the Respondent(s): Mrs. Kausar Parveen, ASC
Dr. Ishtiaq Ahmed Khan, DG (Law)FBR

Date of Hearing: 04.03.2025

JUDGMENT

Irfan Saadat Khan, J.- The instant leave petition has been filed against the order passed by the Lahore High Court, Lahore in ITR No. 41034 of 2017, dated 27.02.2024.

2. Briefly stated, the facts of the case are, that the petitioner, an individual, is the Proprietor of F.A Traders and derives income as a dealer/distributor of the biscuits manufactured by M/s Ismail Industries Limited (hereinafter referred to as '**M/s Ismail**'). The proceedings were initiated by the Assessing Authority (hereinafter referred to as '**AA**'), against the petitioner on the basis of an information received from M/s Ismail that the petitioner has made purchases of Rs. 21,033,395/-, which had not been disclosed by him in respect of the tax year 2013. Thereafter, notice under section 114 of the Income Tax Ordinance,

2001 (hereinafter referred to as '**The Ordinance**') was issued by the AA to the petitioner, which remained un-complied with. Subsequently, a show cause notice, under section 122C of the Ordinance was issued, which also remained un-complied with. Thereafter, provisional assessment under section 122C of the Ordinance was made by the AA by computing the net income of the petitioner at Rs.21,033,395/-, on 15.05.2014, and creating a tax demand of Rs. 6,584,188/-. Upon receiving the said tax demand notice, the petitioner filed his returns for the tax years 2012 and 2013, thereby declaring his net incomes at Rs. 340,000/- and Rs.349,000/- respectively. A notice under section 122(5) of the Ordinance was then issued by the AA to the petitioner mentioning therein that the petitioner has failed to disclose the nature and source of the purchases made by him from M/s Ismail in respect of Rs. 21,033,395/-. Again, the said notice remained un-complied with as the petitioner failed to provide the details required by the AA i.e. the wealth statement and other supporting documents. A reminder dated 05.01.2015 was then issued for compliance on 12.01.2015, which too remained un-complied with. Thereafter, when the AA was left with no option, it passed the order under section 122(5) of the Ordinance, on 27.02.2015, by assessing the income of the petitioner at Rs.21,482,393/- and working out the tax payable by him to the tune of Rs.509,3098/-.

3. Being aggrieved with the said order, the petitioner filed an appeal before the Commissioner Inland Revenue (Appeals) ['**CIR (A)**'] Lahore, who *vide*: order No. 93 dated 19.05.2015, upheld the order of the AA. Thereafter, the petitioner preferred an appeal before the Appellate Tribunal Inland Revenue ('**ATIR**'), bearing ITA No.1540/LD/2015, which after finding substance in the contention of the learned counsel for the petitioner, annulled the order of the AA and also vacated the order of the CIR(A). The Department being aggrieved with the order of the ATIR, filed Income Tax Reference ('**ITR**') before the High Court, who after

hearing the matter, *vide*: order dated 27.02.2024, set aside the order of the ATIR, and upheld the orders of the CIR(A) and the AA.

4. Mr. Hassan Kamran Bashir, learned ASC, has appeared on behalf of the petitioner and at the very outset stated, that the ITR filed by the Department was time barred by 8/9 days, however no findings whatsoever were given by the High Court on the limitation issue, therefore the order of the High Court suffers from this patent illegality. He submitted that the matter may therefore be remanded to the High Court to decide the limitation issue, which is a mixed question of law and facts.

5. Apropos, the merits of the case, he submitted that the petitioner did not fall under the jurisdiction of Unit 04, B.T.B Zone, RTO, Lahore, as the petitioner was being assessed in another Zone, hence the very initiation of proceedings by the AA was illegal and *coram non judice*. He then submitted that the addition made under section 111 of the Ordinance was not in accordance with the law, as the purchases were made by the petitioner from M/s Ismail, which is a verifiable entity, hence the provision of section 111 of the Ordinance was not attracted. He asserted that the amount of purchases cannot be treated as income of the petitioner as he is a dealer/distributor of biscuits getting 1.5 to 2 percent profit margin only on its sales. He therefore, stressed that the assessment proceedings were *coram non judice* as well as legally and factually incorrect hence the orders of the High Court, CIR(A) as well as the AA may be set aside whereas that of ATIR may be upheld.

6. Mst. Kausar Parveen, learned ASC alongwith Dr. Ishtiaq Ahmed Khan, DG (Law), FBR have appeared before us and have vehemently refuted the arguments of the learned counsel for the petitioner. With respect to the limitation issue, they submitted that the ITR was filed in a timely manner before the High Court, but as there were some minor shortcomings in the ITR, it took the department

some time to remove the same. They submitted that firstly the said ITR was not time barred, however, on the safe side a proper CMA was filed before the High Court seeking condonation of the alleged delay, if any. They admitted that there was no discussion on this issue by the High Court, however submitted that since a proper application was filed by the Department seeking condonation of delay, the said delay, if any, has been impliedly condoned by the High Court and the decision was given on the merits of the case.

7. Apropos, the merits of the case are concerned, they submitted that the orders of the three *fora* below i.e. AA, CIR(A) and that of the High Court supports the stance of the Department, as ample opportunity was provided to the petitioner to provide the details and other necessary documents in order to enable them to frame a proper assessment, however it is evident from the assessment order and from the various show cause notices issued to him from time to time by AA that the petitioner has miserably failed to file the required details. They, therefore, submitted that the addition made under section 111 of the Ordinance by the AA was in accordance with law, which was rightly upheld by the CIR(A) and the High Court, and finally prayed that the instant leave to appeal is misconceived, which may be dismissed and the order of the High Court may be upheld.

8. We have heard the learned counsels for the parties and have also perused the record with their able assistance.

9. The primordial question raised in the instant matter is regarding the issue of limitation. It is an admitted fact on behalf of the respondent that the order of the ATIR was received by the Commissioner Inland Revenue on 09.03.2017. The said ITR was filed before the High Court on 29.05.2017, within the limitation period, which was set to expire on 07.06.2017. However, since the said ITR suffered from some shortcomings, it took the department few days in removing the said objections raised by the branch. The said shortcomings/defects were

finally removed after 8/9 days of the expiry period. The Department has taken the stance that the decision was given on merits by the High Court and the limitation issue raised by the counsel for the petitioner was a mere technicality which ought to be ignored. It may however be noted that till such time the objections were removed the matter already got time barred, which is evident from the fact that an application under section 5 of the Limitation Act, 1908 was filed by the Department before the High Court, with the prayer that the delay may be condoned. It is a settled proposition of law that if objections raised by the office of the Court were not removed within the time specified by the office and in the meantime limitation for filing the appeal stands expired, the appeal would be rendered as time barred. Reliance in this regard is placed upon the decision of Asad Ali vs The Bank of Punjab.¹

10. It is also a settled proposition of law that limitation is not a mere technicality as once limitation expires a vested right is created in favour of the other side by operation of the law which cannot be taken away lightly.² It appears that the record is completely silent whether the defects in the ITR pointed out by the office were remedied within the time given by the office or not, however it is an admitted position that the matter became time barred, for which an application was filed by the Department before the High Court. Though the High Court has passed the order on the merits of the case but it could not be denied that it has failed to discuss the averments of the CMA with regard to the limitation by specifying whether the same was allowed or rejected; which the High Court ought to have decided as a preliminary issue, duly raised by the petitioner in his objections to the said CMA. We also do not agree with the Department, that the CMA was impliedly allowed by the High Court, as it is a trite principle of law that a vested right can only be taken away through express

¹Asad Ali and 9 others vs The Bank of Punjab and others (PLD 2020 Supreme Court 736).

² *Ibid.*

legislation and not by implication. Furthermore, we were able to lay our hands on the decision given in the case of Abdul Jabbar Shahid³ (authored by Justice Shahid Waheed as he then was, now a judge of this Court). The relevant portion of the said judgment is reproduced herein below:

“Before proceeding further it is apposite to state here that judgment debtors Nos. 1 and 2 (appellants of FAO. No.290 of 1995) along with their objections also filed an application under section 5 of the Limitation Act for condonation of delay. The learned Chairman Banking Tribunal in para 3 of his impugned order dated 8.11.1995 had mentioned about application under section 5 of the Limitation Act yet he did not pass any final order for its disposal. It means that the application under section 5 of the Limitation Act remained undecided. It is settled principle of law that non-disposal of the miscellaneous applications while deciding the main case vitiates the final order. In this regard reference may be made to the cases of Rehmat Ali Kohar v. Mst. Sardaran Bibi and 15 others (PLD 1986 Lahore 283), Muhammad Umar v. Muhammad Qasim and another (1991 SCMR 1232). Pak Carpet Industries Ltd v. Government of Sindh and 2 others (1993 CLC 334), Khair Deen v. Rehm Deen and 4 others (1996 CLC 1731) and Azra Manzoor Qureshi v Faysal Bank Limited and 2 others (2005 CLD 1417). Thus, the impugned order dated 18.11.1995 is liable to be set aside on this score also.”

11. We, therefore, are of the view that in order to do complete and substantial justice in the instant matter, it would be in the fitness of things that we remand this case to the High Court with the directions to pass a clear and speaking order on the CMA concerning the condonation of delay, after granting opportunity of hearing to both the parties. The High Court, in our view, should clearly mention in its order the complete facts with regard to what objections were raised by the office and when were they finally removed and then ultimately give a decision on the CMA, in accordance with the law, since the point of

³Abdul Jabbar Shahid and others vs National Bank of Pakistan and others (PLD 2019 Lahore 76).

limitation is always considered to be a mixed question of law and fact⁴ which needs to be decided at the preliminary stage.

12. With the observations made above, the instant leave to appeal stands disposed of.

ISLAMABAD
04.03.2025
Arshed / Mustafa Kundi L.C.

"Approved for Reporting"

⁴ Abdul Hafeez Abbasi and others vs Managing Director, Pakistan International Airlines Corporation, Karachi and others (2002 SCMR 1034)
Collectors of Customs E & S.T. and Sales Tax vs Pakistan State Oil Company Ltd (2005 SCMR 1636)