IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE YAHYA AFRIDI

Civil Petition Nos. 593-L, 594-L & 595-L of 2021
(Against the order dated 20.01.2021 passed by the Lahore High Court, Lahore in ITR No. 2649 of 2021)

Commissioner Inland Revenue, Lahore *(in all cases)*
...Petitioner

Versus

M/s HNR Company (Pvt) Limited, Lahore *(in all cases)*
...Respondents

For the petitioner:	Mr. Sarfraz Ahmed Cheema, ASC Syed Fayyaz Ahmad Sherazi, AOR (absent) Mr. Naeem Hassan, Secy. (L), FBR *(in all cases)*
For the respondents:	Ms. Sheerin Imran, ASC Mr. Arshad Ali Ch., AOR *(absent)* *(in all cases)*
Date of hearing:	24.02.2022

ORDER

Qazi Faez Isa, J. To understand the controversy and how it commenced it would be appropriate to reproduce the following from order dated 19 February 2011 of the Deputy Commissioner of Inland Revenue:

> 'Intimation regarding selection of case was sent to taxpayer vide letter no. LTU/DC.(A) 06/1902 dated 08.10.2010. In response to said letter taxpayer through its AR contended that since multiple years have been selected for audit, therefore specific year should be mentioned for which compliance could be made.'

The said order of the Deputy Commissioner was assailed before the Commissioner Appeals of Inland Revenue, who remanded the case

for reappraisal *vide* his order dated 15 September 2011, which was challenged before the Appellate Tribunal Inland Revenue (**'the Tribunal'**) and *vide* order dated 6 October 2020 the Tribunal decided in favour of the respondent; the operative part of the Tribunal's order is reproduced hereunder:

> '4. We have heard the arguments of both sides and have perused the available record. In both years under appeal, we find that the assessing authority passed the best judgment orders by resorting to the provisions of section 121(1)(d) of the Income Tax Ordinance, 2001. Through additional grounds of appeal, the main contention of the learned A.R is that the assessing authority was not justified to pass order under section 121(1)(d) when a valid return has been filed by the taxpayer which was assessment order u/s 120 of the Income Tax Ordinance, 2001. From the perusal of record, it is evident that the taxpayer had filed a valid return of total income which was deemed to be assessed u/s 120(1) of the Income Tax Ordinance 2001. The issue of best judgment assessment framed under section 121(1)(d) of the Income Tax Ordinance, 2001 being unlawful in the presence of deemed order u/s 120, has already been decided by the Hon'ble Lahore High Court Lahore in the case reported as **2013 PTD 837** in which it has been held as under:
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> > "For the above reasons, we are of the view that prior to the amendment brought about in sections 121 and 177(10), through Finance Act, 2010, section 121(1)(d) did not apply to cases where return of total income had been filed and did not envisage a second assessment order."
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> 5. In view of the above settled binding precedent, we hereby cancel the order passed u/s 121(1)(d) by the assessing authority for tax year 2006 and vacate the order of the learned CIR(A).
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> 6. As far as the department appeal for tax year 2005 is concerned, here too, we find that the taxpayer had filed a valid return of total income which was deemed to be assessed u/s 120(1) of the Income Tax Ordinance 2001 which was later on amended through best judgment assessment framed under section 121(a)(d) of the Income Tax Ordinance, 2001. In the light of the above referred judgment of the Hon'ble High Court, we decide the appeal as dismissed above.'

2. The Inland Revenue filed Income Tax References before the Lahore High Court, Lahore, contending that the Tribunal had relied upon section 177(10) of the Income Tax Ordinance, 2001 (**'the Ordinance'**) which was inserted in the year 2010 and as such it would not be applicable to the case of the respondent with regard to income tax returns for the Tax Years 2005 and 2006 in respect whereof action had been taken.

3. In response to the notice issued by this Court the learned Ms. Shireen Imran has entered appearance on behalf of the respondent. Learned counsel states that the impugned judgment of the High Court and that of the Tribunal are in accordance with a three-Member Bench judgment of this Court, and which was referred to in the impugned judgment - *Commissioner Inland Revenue, Zone-III, RTO Rawalpindi v Abdullah Khan* (Civil Petition Nos. 526 and 19 other petitions of 2013), reproduced hereunder:

> 'These petitions for leave to appeal have been filed against common Judgment dated 12.11.2012, passed by a learned Division Bench of the Lahore High Court, Rawalpindi Bench. On receipt of Income Tax References in the above noted cases the following question was formulated:-
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> > "Whether assessment under Section 121(1)(d) of the Income Tax Ordinance, 2001 ("Ordinance") can be made in cases where deemed assessment order has already been made under Section 120 of the Ordinance".
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> 2. The above question was examined after having taken into consideration the legislative developments which took place from time to time relating to the amendments in Sections 121(1)(d) and 177(10) of the Income Tax Ordinance, 2001, it was finally concluded as follows:-
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> > "13. For the tax period under discussion i.e., 2004 to 2006 the legislative scheme does not provide for cancellation or

> annulment or amendment of the deemed assessment order passed under Section 120 by an assessment order under Section 121 and 177(10) of the Ordinance, whereby deemed assessment is declared to have no legal effect if an assessment order under Section 121 is passed, establish that the un-amended version of these sections did not provide for cancellation or amendment of the deemed assessment order thereby identifying the lacuna in the law prior to the amendment. Reliance is placed on Glaxo Laboratories Ltd. v. Inspecting Assistant Commissioner of Income Tax and others (1992 SCC 910).
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> 14. For the above reasons, we are of the view that prior to the amendment brought about in Sections 121 and 177(10) through Finance Act, 2010, Section 121 (1)(d) did not apply to cases where return of total income had been filed and did not envisage a second assessment order".

3. We have heard the learned counsel for the petitioner at length. According to her contention, the learned High Court has adverted to only one question which has been answered in negative although there were so many other questions, which arose. Suffice it to observe, in such a situation it was for the department to have moved an application before the High Court. At present we are only required to examine the effect of the answer given by the High Court to the question noted herein above, therefore, we cannot take into consideration the argument that there were so many other questions. It is to be noted that the learned High Court examined the relevant provisions, reference to which has been given in the concluding para. The question as framed was answered in accordance with the position of the law as it existed in 2004 and 2006. Subsequently certain amendments were made in view of the Judgment of the Income Tax Tribunal. These amendments do not take effect retrospectively. The Judgment of the learned High Court seems to be justified which needs no interference. For the foregoing reasons, these petitions are dismissed and leave refused.'

Learned Ms. Shireen Imran submits that the issue raised in these petitions has already been decided by this Court and as such these petitions merit dismissal.

4. Learned Mr. Sarfraz Ahmed Cheema availing his right of reply states that the cited precedent is distinguishable. The distinction he sought to put forward is that section 177(10) of the Ordinance was incorporated into Chapter X of the Ordinance which is titled *Procedure*, therefore, the same being a procedural enactment may have retrospective effect, and would be applicable in the present cases, which are in respect of the 2005 and 2006 Tax Years.

5. We have heard the learned counsel and with their able assistance examined the facts of the case, the different provisions of the Ordinance and the cited judgment. Admittedly, the respondent had submitted its income tax returns for the Tax Years 2005 and 2006. These returns were deemed to have been accepted under section 120 of the Ordinance and, as held in the cited precedent, section 121 of the Ordinance would not apply. There is also an additional ground which prevented action to be taken which was the 'five years' limitation period provided in section 122(2) of the Ordinance, and since five years had expired action could not be initiated. The respondent had also written to the Deputy Commissioner, Inland Revenue, to identify the '*specific year*' but he deigned not to respond to their legitimate query. Instead the Deputy Commissioner Inland Revenue elected to proceed unilaterally and did so without providing an opportunity of a hearing to the respondent, which was yet another transgression of the law. The contention that because Chapter X of the Ordinance is titled *Procedure* it attends to purely procedural matters is not correct nor that section 177(10) of the Ordinance brought about procedural changes.

6. This Court in the cited precedent had made it clear that recourse to section 177(10) of the Ordinance could not be made retrospectively. In this case, the cited section was purportedly used to attend to returns for the Tax Years 2005 and 2006. Since the question of retrospective application had already been decided by this Court in 2013 the Inland Revenue should not have re-agitated the matter, again, first before the High Court and then before this Court. The Inland Revenue by needlessly filing cases in respect of matters which have already received authoritative pronouncement by this Court is regrettable. This unreasonable conduct also unnecessarily adds to the large number of pending cases and consumes the time and resources of the superior courts. The Inland Revenue should act fairly toward taxpayers, gain their confidence and encourage those paying taxes and expend its time, money and effort against those who do not.

7. Leave to appeal is declined in these petitions, and consequently they are dismissed with a caution that if the Inland Revenue persists in filing such frivolous petitions substantial costs may in future be imposed.

Islamabad
24.02.2022
Approved for reporting.

Arif