

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petition No. 339-L of 2023

*[Against the order dated 21.11.2022 of
the Lahore High Court, Lahore passed in
I.T.R No. 71408 of 2022]*

*Commissioner Inland Revenue (Legal Zone), Large
Taxpayers' Office, Lahore.*

... *Petitioner*

Versus

M/s Seven Star Sugar Mills (Private) Limited, Karachi.

... *Respondent*

For the Petitioner:

Mr. Ahmed Pervaiz, ASC.
[Via Video-link from Lahore]
Mr. Arfat Rasool, Secretary Legal, FBR.

For the Respondent:

Nemo.

Date of Hearing:

01.09.2025.

JUDGMENT

Muhammad Shafi Siddiqui, J. The question of law proposed by the petitioner's counsel is whether the provisions of section 129(1)(a) of the Income Tax Ordinance, 2001 (hereinafter referred to as '**the Ordinance**') permits the Commissioner Inland Revenue Appeals (hereinafter referred to as '**the Commissioner Appeals**') to remand the case, as the mandate of the Commissioner Appeals itself is limited to the extent provided in the aforesaid provisions by way of an amendment brought earlier.

2. We have heard the learned counsel for the petitioner and perused the material available on record. The proceedings were initiated by the Additional Commissioner (Audit), Inland Revenue (hereinafter referred to as '**Assessing Officer**'), which culminated into order under section 122(5A) of the Ordinance.

3. Respondent being aggrieved of it, filed an appeal before the Commissioner Appeals against the order of the Assessing Officer, which

held that the amended assessment order was passed in haste and, consequently, was annulled and the matter was "*remanded*" by the Commissioner with direction to proceed afresh against the respondent.

4. Having not been satisfied on account of limitation cap, the taxpayer preferred appeal before the Appellate Tribunal Inland Revenue, Lahore Bench, Lahore (hereinafter referred to as '**the Tribunal**'), which appeal was accepted and it was held that once the Commissioner Appeals held that the amended assessment order was not valid then the direction to carry out proceeding afresh cannot be given, consequently, the appeal of the respondent was allowed.

5. The petitioner then filed a Tax Reference under section 133(1) of the Ordinance against the order of the Tribunal dated 25.01.2022 before the High Court, which was dismissed through the impugned order, hence the present petition for leave to appeal. Notice was issued to the respondent and it is reported that the respondent has refused to accept it. Today, no one is in attendance on behalf of the respondent.

6. Before we could conclusively interpret the provisions of section 129 of the Ordinance, we need to trace its history. Two provisions are important to be discussed. Under section 122(5A) of the Ordinance (as it stood in 2014), the Commissioner was empowered to amend or further amend an assessment order if he considered it erroneous and prejudicial to the interest of revenue, after making or causing necessary enquiries. However, this power was limited to amendment of an existing assessment and did not extend to remanding or directing a fresh assessment. This relevant provision was inserted *vide* Finance Act, 2003, which is relevant. Similarly, following the Finance Act, 2005, the powers of the Commissioner Appeals under section 129 were confined to confirming, modifying, or annulling an assessment, with the express remand power deleted. Therefore, under section 129 post-2005, the Commissioner Appeals lacked jurisdiction to remand for a fresh assessment and was bound to decide matters. For the purposes of present controversy, we are discussing the powers of Commissioner Appeals as available under section 129(1)(a) only.

7. Powers of the Commissioner Appeals are defined under section 129 of the Ordinance as amended *via* Finance Act, 2005:

129. Decision in appeal.— (1) In disposing of an appeal lodged under section 127, the Commissioner (Appeals) may –

1[(a) make an order to confirm, modify or annul the assessment order after examining such evidence as required by him respecting the matters arising in appeal or causing such further enquires to be made as he deems fit; or]

(b) in any other case, make such order as the Commissioner (Appeals) thinks fit.

8. Clause (a) of section 129 of the Ordinance was substituted by the Finance Act, 2005. The original clause (a) prior to above substitution read as follows:

(a) in the case of an appeal against an assessment order –

- (i) make an order to set aside the assessment order and direct the Commissioner to make a new assessment order in accordance with any directions or recommendations of the Commissioner (Appeals); or
- (ii) make an order to confirm, modify or annul the assessment order; or

9. Comparison of powers of Commissioner Appeals Pre and Post Amendment.

Pre-Amendment Position (Before Finance Act, 2005)

Under the original section 129(1)(a), the Commissioner Appeals had two distinct options when dealing with an appeal against an assessment order:

Set aside and Remand Power

- (i) He could set aside the assessment order and direct the Commissioner to make a new assessment order in accordance with his directions/recommendations.
- (ii) This effectively empowered the Commissioner (Appeals) to remand cases back for a fresh assessment (a de novo order).

Confirm/Modify/Annul

- (i) Alternatively, he could confirm, modify, or annul the assessment order.

10. Thus, the Commissioner (Appeals) had both appellate review powers (confirm/modify/annul) and remand powers (send back for fresh assessment).

Post-Amendment Position (After Finance Act, 2005)

The Finance Act, 2005 substituted clause (a) and restricted the appellate powers:

Now, the Commissioner (Appeals) may only:

“make an order to confirm, modify or annul the assessment order after examining such evidence as required by him respecting the matters arising in appeal or causing such further enquiries to be made as he deems fit.”

Importantly, the explicit power to set aside and remand for fresh assessment was deleted.

11. After this amendment even FBR (then CBR) issued the following directions in the Circular No. 1 of 2005 (Income Tax) dated July 5, 2005:

16. **SETTING ASIDE OF ASSESSMENT ORDER BY COMMISSIONER (APPEALS).**
[Section 129 (1)(a)]

Clause (a) of sub-section (1) of section 129 has been substituted and Commissioner (Appeals) has been *divested of the option* to set-aside an assessment. After amendment Commissioner (Appeals) would be able only to modify, confirm or annul the assessment after making (or getting conducted) enquiries or examining the books of accounts etc. as he deems fit. This will bring relief to the taxpayers and also stop unnecessary deferment of revenue. The provision of said clause will be applicable in case of appeals filed on July 1, 2005 and onwards.

12. From comparison of the above, it is unambiguously clear that after the amendment by the Finance, Act, 2005, the CIR(A) may confirm, modify or annul the assessment order because the CIR(A) has wider powers to conduct enquiry. Therefore, in the wake of above the Commissioner Appeals lacks jurisdiction to go beyond the scope of section 129 of the Ordinance of

2001 and remand the matter to lower forum; rather is bound to decide the same and may exercise all such powers as available.

13. The well recognized rule of construction or interpretation of any fiscal statute or its particular provision is that the intention of the legislature must be discovered from the words used. If the words used are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction. If the words of a statute or its any provision are readily understood without any ambiguity, then obviously, it is not for the court to raise any doubt as to what they mean for any contrary view, rather than implementing the same without any hesitation. A statute or any enacting provision must be so construed as to make it effectual and operational.¹

14. 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.²

15. We therefore in view of the peculiar facts and circumstances of the case sent back the case to Commissioner Appeals who was under an obligation to decide the case within the frame of section 129(1)(a) of the Ordinance as it then was. Since the powers to make further enquiries were available, instead of remanding the matter. This petition is converted into appeal, the impugned judgment is set aside and appeal is allowed.

Chief Justice

Judge

Judge

Islamabad:
01.09.2025
Approved for Reporting
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¹ Islamabad Electric Supply Company Limited (IESCO) Vs. The Appellate Tribunal Inland Revenue (H.Q), Islamabad (2023 SCMR 1516).
² Allied Bank Limited Vs. The Commissioner of Income Tax, Lahore (2023 SCMR 1166).