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 Appeals No. 1388 to 1392 of 2017
[On appeal from the judgment/order dated 12.02.2015 passed by the Lahore High Court, Lahore in STRs No. 116/2007, 127/2007, 14/2008, 21/2009 and 185/2011]

AND
CMAs No. 1917-L to 1919-L/15 and 964-L and 966-L/2015
[Stay Applications]

Haseeb Waqas Sugar Mill Limited.
(In CA 1388/17)

Abdullah Sugar Mill Limited, Lahore.
(In CAs 1389-1392/17) ... *Appellants*

Versus

Government of Pakistan through Secretary Finance, and others.
(In CAs 1388, 1391 & 1392/17)

Large Taxpayer Unit (LTU), Tax House, Lahore.
(In CA 1389/17)

Appellate Tribunal Inland Revenue, Lahore.
(In CA 1390/17) ... *Respondents*

For the Appellants: *(In all cases)*	Mr. Hisham Ahmed Khan, ASC. Mr. Ijaz Ahmad Awan, ASC. *(Through Video-link from Lahore)*
For the Respondents:	Ch. M. Zafar Iqbal, ASC. Dr. Ishtiaq Ahmad Khan, *Director-General, Law, FBR.*
Date of Hearing:	09.09.2025.

JUDGMENT

Muhammad Shafi Siddiqui, J. The primary question that came for consideration before the High Court in the referred Sale Tax Reference (STR No.14 of 2008) is reproduced hereunder:

> *"Whether the adjudication vide Order-in-Original involved is hopelessly Time Barred and this prime fact which is also a*

> *paramount question of law has been taken care of/adjudicated upon by the foras below?".*

The follow up question which was decided is*:*

> *"Whether such question, if not raised in the lower fora, could be raised and argued before High Court in reference jurisdiction."*

2. This common question of law was decided in all connected civil appeals, therefore, we propose to decide this bunch wherein leave was granted on 01.11.2017, by a common order.

3. The impugned judgment concluded the above question in terms of its paragraph 15, whereby it was held that no doubt the Court (reference jurisdiction) exercises a special jurisdiction under section 47 of the Sales Tax Act, 1990 (hereinafter referred to as "**the Act**") however that jurisdiction merely extends to decide the question of law, which arises out of the order and not otherwise. The court, in its order restricted itself not to go into any question of law raised for the first time before it. In paragraph 16 of the impugned judgment, it concludes that "**the reference applications do not give rise to a question of law to arise from the orders of the appellate tribunal and thus the references were dismissed**".

4. We have heard the learned counsel for the parties and perused the material available on record. The reasons that prevailed with the High Court was of a special jurisdiction being exercised under section 47 of the Act which, according to the judgment could only be extended to the question of law that arises out of the order. Perhaps the view in the impugned order was that it is restricted to question "raised" before lower *fora* and "decided" and that new question of law (even if arises out of order) cannot be framed and that in terms of paragraph 16 (referred above) reference application devoid of such order.

5. In our understanding this concept/principle is completely alien, as the order give rise to a question and not reference application.

6. As to the scope of reference jurisdiction under the relevant statute, the matter came up for consideration with reference to Income Tax Ordinance, 2001. There is no cavil to the proposition that the scope of reference is now extended to the extent of an appeal, which is continuation of main *lis* and in consequence thereof such principles, considering the statutory frame of reference jurisdiction are also attracted. In terms paragraphs 49 and 50 of the *Messrs Squibb Pakistan Pvt. Ltd Vs. Commissioner of Income Tax* (2017 SCMR 1006), this Court has held that:

> "*49. An independent interpretation of section 133 of the Ordinance, 2001, as it stands today, on the plain language of the law, liberated from the burden or benefit of earlier judgments, would make the position very clear. Subsection (1) confers a right on any person or the Commissioner aggrieved by a final order of the Appellate Tribunal to file an application before the High Court along with a statement of the case stating any questions of law arising out of the Tribunal's order. There is a direct right to approach the High Court in a similar manner as in appeals, revisions, reviews etc. The order being challenged is the final order but the challenge is limited to questions of law only. The statement must set out the facts, the Tribunal's determination and the questions of law which arise out of its order in terms of subsection (3). The questions of law which may be referred are only those which "arise" out of the order of the Tribunal. On the plain language of the law, this would include any question which can be made out from the order of the Tribunal. There is nothing in the scheme of the section to impute any extraordinary limitations on the type of questions which may be posed. The facts as stated in the Tribunal's order have to be taken as recorded and any question which can be made out from those facts may be raised in an application under section 133 ibid, regardless of whether it was previously urged or not. There is absolutely no reason for confining the questions which may be referred to only those which were argued before the Tribunal on the hypothesis that this is an advisory jurisdiction as that is not what the language of the law contemplates. The law, as it stands, allows all questions* ***"arising" out of the order*** *to be referred and not just questions "argued" or "raised"* ***before the Tribunal****.*
>
> *50. Section 133 ibid clearly states that upon hearing a case, the High Court is obligated to decide the question of law raised by the reference and pass judgment thereon and the Tribunal's order automatically stands modified by the order of the High Court. This is an extremely significant aspect as it is the essence of an appellate order that it* ***per se*** *modifies the order of the lower forum, or, in other words, merges into it. As pointed out above,*

> *this particular aspect of section 133 ibid was introduced for the first time by way of the 2005 amendment and was not present in section 66 of the Act, 1922 during the brief period between 1971 and 1974 when the law was similar to the present one. It is therefore clear beyond any doubt that the remedy under section 133 ibid is appellate in nature and must be construed and applied as such. The language of the law must be given effect to, rather than unnecessarily restricting the scope of the jurisdiction on the basis of judgments from an era when the law and circumstances were completely different. The civilized world, including our own country, has been moving towards greater rights for citizens over the last century to the extent that the privilege of a fair trial has now become a constitutional right. In these circumstances, it is not appropriate to restrict the scope of a legal remedy available to citizens on the basis of old decision, especially when the language of the law is clearly pointing in the opposite direction."*

The question of limitation is always considered as an integral part of main *lis* and can never be isolated, be it special/appellate or regular plenary jurisdiction etc. Limitation ought to have been decided as it is always betrothed with the litigation. It is attached with litigation in such a way that it becomes court's duty to look into it as a priority, on its own.

7. The matter of treating the reference as an appeal came for consideration in another case of *Messrs Rafeh Limited*[1] which to a large extent reiterated the principles laid down in the case of *Squibb Pakistan Pvt. Ltd*. It is not the case of the respondents that the orders in all cases, were not passed beyond the period mandated under the law. The only contention was that the question of limitation was never raised in the lower *fora* hence cannot be agitated in the reference jurisdiction, which question was set at rest in the light of the aforesaid judgments of *Squibb Pakistan Pvt. Ltd. and Messrs Rafeh Limited.*

8. It is thus not only those questions which have been pleaded and raised before the lower *fora* which could be agitated in the reference jurisdiction but would also include those which arise out of the order of the Tribunal. The

[1] Commissioner of Inland Revenue Vs. Messrs Rafeh Limited (PLD 2020 Supreme Court 518)

order of the Tribunal talks about passing of order-in-original and thus its validity, in terms of timeframe as contoured by relevant statute is to be adjudged and should have been adjudged, which indeed arises out of the order. There is thus nothing in the referred provision of the reference jurisdiction to prevent the appellants from raising such question of law which can be made out and seen from the contents of the order, impugned in reference jurisdiction. The conclusion of paragraph 49 of the *Squibb case* judgment has an overriding effect and that is the law, as it stands which allows all questions "arising" out of the order to be referred and not just questions "argued" or "raised" before the Tribunal.

9. Thus, the learned High Court erred in the special jurisdiction under section 47 (which is *pari materia* to section 133 of the Income Tax Ordinance, 2001) by not allowing the appellants to raise the questions of law that could be seen flowing and arising out of the order.

10. Therefore, the instant bunch of civil appeals are allowed and the impugned judgment/orders are set aside. The listed CMAs are disposed of.

Chief Justice

Judge

Judge

Islamabad:
09.09.2025

Approved for Reporting
(Asif Bhatti)