

PESHAWAR HIGH COURT PESHAWAR.

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Tax Reference No. 5-P/2013.

Date of hearing 26-06-2014

Appellant by Mr. Rahmanullah, Advocate.

Respondent by Mr. Imran Javed, Advocate.

YAHYA AFRIDI, J.- Through this single

judgment, we propose to dispose of four Tax
References, as common questions of law are

involved therein. The particulars of which are as

under:-

1. Tax Ref. No. 5 of 2013
(Commissioner of Inland
Revenue Zone-III, Regional
Tax Office, Peshawar vs.
Tariq Mehmood C/O Khan
Enterprises, Kohat).
2. Tax Ref. No. 6 of 2013
(Commissioner of Inland
Revenue Zone-III, Regional
Tax Office, Peshawar vs.
Tariq Mehmood C/O Khan
Enterprises, Kohat).

3. Tax Ref. No. 7 of 2013 (Commissioner of Inland Revenue Zone-III, Regional Tax Office, Peshawar vs. Tariq Mehmood C/O Khan Enterprises, Kohat).
4. Tax Ref. No. 8 of 2013 (Commissioner of Inland Revenue Zone-III, Regional Tax Office, Peshawar vs. Tariq Mehmood C/O Khan Enterprises, Kohat).

2. In all these References, the petitioner has formulated the following common questions of

law:

- I. *Whether on the facis and circumstances of the case, the ATIR was justified in holding that a person dissatisfied with the order passed under Section 122(c) of the Income Tax Ordinance, 2001 can file appeal before the CIR (Appeals) whereas section 127 specifically excludes the provisional order passed u/s 122(c) from purview of appeal under section 127?*
- II. *Whether the ATIR was justified to confirm the order of the Commissioner Inland Revenue (Appeals) without examining the above legal aspect of the case?*
- III. *Whether the ATIR was justified to reject the appeal of the department when the order u/s 122(c) is not appealable as*



*provided in Section 127 of the
Income Tax Ordinance, 2001?*

3. Learned counsel for the petitioner/revenue

restricted his arguments to the question of law

No. "III" which reads as under:-

*"Whether the ATIR was
justified to reject the appeal of
the department when the order
u/s 122(c) is not appealable as
provided in Section 127 of the
Income Tax Ordinance,
2001"?*

4. Learned counsel for the

petitioner/Revenue vehemently argued that

despite this ground of appeal taken by the

Revenue before the worthy Tribunal, the same

was not addressed in the impugned decision.

Thus, the Revenue was prejudiced in their claim

before the worthy Tribunal.

5. This Court is not in accord with the

contention raised by the learned counsel for the

petitioner for the simple reason that Section 127

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of the Ordinance, at the time of filing of appeal, clearly excluded "*provisional assessment orders*" made under Section 122(c) (*ibid*). Section 127 of the Ordinance has been amended vide Finance Act, 2012 and the word "*provisional*" has been deleted therefrom. Hence, the amendment brought through Finance Act, 2012 would not apply to the case in hand and the law as it stood at the time of filing of appeal would govern the maintainability of the said appeals.

6. Now, when we look at the assessment orders passed by the assessing officer under Section 122(c), it is noted that there is a distinction provided in the "*provisional assessment orders*" and the "*assessment*

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orders" under Section 122(c). Once the "*provisional assessment orders*" is passed, the same matures after a lapse of sixty days into an assessment order. Thus, the impugned assessment orders which had been challenged before the Commissioner (Appeals) did not come within the mischief of "*provisional assessment orders*" which were then excluded from being challenged in appeals under Section 127 of the Ordinance.

7. In view of the above, it is noted that the appeals being not against the "*provisional assessment orders*" but "*assessment orders*" passed under Section 122(c) of the Ordinance, the same could be challenged in appeal under

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Section 127 of the Ordinance, as was correctly entertained by the appellate forum.

8. Accordingly for the reasons stated hereinabove, these Tax References are answered in the Negative and the decisions of the worthy Tribunal are maintained, despite the same having not addressed this crucial issue in its impugned decision.

9. Office is directed to send a copy of this judgment under the seal of the Court to the Appellate Tribunal Inland Revenue, Peshawar Bench, Peshawar.

Announced on:
26.6.2014

sd/- Jabir Akbari J
sd/- Musabbat Hildebi J

Nawab Shah

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