

**APPELLATE TRIBUNAL INLAND REVENUE, ISLAMABAD BENCH,
ISLAMABAD**

ITA No.382/IB/2012
Tax Year 2005

Commissioner Inland Revenue (Zone-I), RTO, Rawalpindi		Appellant
	Vs	
Mr. Adnan Mahmood malik, Manager Operational Bank Alfalah, 59 Shah Plaza, Commercial Area, Chaklala Scheme-III, Rawalpindi.		Respondent
Appellant By		Mr. Tahir Khan, DR
Respondent By		Mr. Hameed Baloch, Advocate
Date of Hearing		28.05.2014
Date of Order		28.05.2014

Order

This appeal has been filed by the Revenue against the order No.274/2012 dated 21.01.2012 passed by Commissioner Inland Revenue (Appeals-III), Islamabad to the assessment year 2005 on the following grounds: -

1. That the order of the learned CIR (A) is bad in law and contrary to the facts of the case.
 2. That the learned CIR (A) was not justified to quash the order passed under section 161/205 as the taxpayer has failed to comply with the provisions of notice under section 140 of the Income Tax Ordinance, 2001 served upon him on 03.01.2011.
 3. That the findings of the learned CIR (A) that the balance in the account of defaulter on 03.01.2011 was Rs.8150/- is against the facts of the case, infact balance of Rs.855,750/- was available in the Bank Account No.010000094 of the defaulter at the time of service of notice under section 140 which was deliberately transferred to account No.010000251 of the same Bank Branch after receipt of notice under section 140 of the Income Tax Ordinance, 2001.
 4. That the learned CIR (A) was not justified to quash the assessment order under section 161/205 without any cogent basis and appreciating the facts of the case.
 5. That the appellant may be allowed to alter, amend or add more grounds of appeal at the time of hearing.
2. The taxpayer is an individual who has been assessed as assessee in default u/s 161 of the Income Tax Ordinance, 2001. Brief facts of the case are that the

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taxpayer who is Manager of Bank Alfalah, Chakalal Scheme-III Branch was served with a notice u/s 140 for attachment of the account of M/S Khan Jee Filing Station, the taxpayer instead of complying with this notice transferred the amount lying in the account of M/s Khan Jee to some other account. The taxpayer has been treated as taxpayer in default for the above non-compliance and a demand of Rs.850,000/- has been raised against him, which was lying in the account of M/s Khan Jee Filing Station.

3. This case came up for hearing on 23.05.2014. The learned DR contended that the learned CIR (A)'s order of quashment of the order passed by the Assessing Officer was without authority of law. The appellant violated the provisions of section 140 of the Income Tax Ordinance, 2001 by allowing encashment of Rs.850,000/- on 03.01.2011 despite having being served a notice u/s 140 of the Ordinance on 03.01.2011.

4. The learned Counsel for the appellant defended the order in appeal passed by the learned CIR (A).

5. Having heard the rival arguments from both the parties to the case. I understand that the appellant in his capacity as manager of Bank Alfalah was in control of his client's account No.0098-01000099 titled Khan Jee Filing Station. The holder of this account issued a cheque dated 24.12.2010 to another person namely Haji Zaheer Ullah Khan who maintained account No.0098-01000251 in the same branch of the bank. The Revenue's position is that RTO's notice u/s 140 of the Income Tax Ordinance, 2001 was served on the appellant on 03.01.2011, however, the department does not deny that the account holder/taxpayer i.e. Khan Jee Filing Station had already issued a cheque to the payee on 24.12.2010 i.e. prior to the service of notice u/s 140 of the Ordinance on the appellant. The cheque dated 24.12.2010 held by the payee could have been presented by him for encashment on any date between

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on the same date. I had asked the DR and the AR to present copy of the notice u/s 140 of the Income Tax Ordinance, 2001 as well as the exact time of encashment of the payee's cheque but neither party did. The respondent was given full opportunity to bring evidence of the appellant's malafide but failed to discharge its onus of proving that the appellant allowed encashment of the cheque in hand of payee despite already having received a notice u/s 140 of the Income tax Ordinance, 2001. Notwithstanding the merit in this particular case, the larger issue of the economic law of the land and public policy is that the Revenue has no lawful authority to just walk into a bank manager's office and demand him to transfer the taxpayer's money lying in his account to the account of the tax authority without a prior notice u/s 140 of the Income Tax Ordinance, 2001. Although, section 140 of the Income Tax Ordinance, 2001 does not specifically provide for a prior notice yet due process of law and justice require that a prior notice of the Revenue authority's intention to impound the account of a taxpayer should be served well before its attachment. The general body of the corporate law requires 15-days prior notice before doing anything prejudicial to the interest of a person by any person. Regardless, whether the appellant manager allowed encashment of the payee's cheque with malafide intention or not, the respondent's failure to issue prior notice of account attachment well before its physical attachment or attempt is without the authority of law. Hence, the learned CIR (A)'s order of quashment of the Assessing Officer's order is affirmed. The appeal, being without merit is dismissed. .

6. This order contains (3) pages each bearing my signature and seal.

Sd/-
(IKRAM ULLAH GHOURI)
Judicial Member
(Empowered U/s 130 (8) (a) of the Income Tax
Ordinance, 2001 to exercise powers and functions of
the ATIR, sitting singly.