

[IN THE LAHORE HIGH COURT, LAHORE ]  
**COMMISSIONER INLAND REVENUE, LTU,  
ZONE-II, LAHORE**

*Versus*

**NESTLE PAKISTAN LIMITED.**

*Present: Syed Mansoor Ali Shah, Shujaat Ali Khan, JJ.*

**Sales Tax Reference No.14 of 2013,  
decided on 11-3-2014.**

*Mrs. Kausar Perveen and Ch. Muhammad Zafar Iqbal,  
Advocates, for the Petitioner.*

*Imtiaz Rasheed Siddiqui and Shehryar Kasuri, Advocates with  
Mr. Asim Zulfiqar, Chartered Accountant, for the Respondent.*

*Date of hearing: 11-3-2014.*

**J U D G M E N T**

[The Judgment of the Court was delivered by, **Syed Mansoor Ali Shah, J.**] – Learned counsel for the respondent has raised a preliminary objection that the instant reference is not maintainable as the same has been filed by a person who is not

authorized to file the instant reference in terms of section 47(1) of the Sales Tax Act, 1990 ("Act"). Elaborating his point he submits that admittedly the instant reference was filed on 28-01-2013. The power of attorney has been signed by one Shafqat Mahmood, Commissioner Inland Revenue (Zone-II), Large Taxpayers Unit, Lahore, dated 24-10-2012 along with his affidavit supporting the reference dated 03-01-2013.

2. Learned counsel has referred to Notification dated 11-01-2013, issued by the FBR, whereby the said officer had relinquished charge of the post of Commissioner Inland Revenue (Zone-II), Large Taxpayers Unit, Lahore, and assumed the charge of the post of Chief Commissioner Inland Revenue (OPS) Regional Tax Officer, Lahore w.e.f. 4-1-2013. Thus, on the date of filing of the instant reference the aforementioned officer was not the Commissioner Inland Revenue (Zone-II), Large Taxpayers Unit, Lahore. Learned counsel further submits that section 47 read with section 31 of the Act and the Notifications issued thereunder dated 01-03-2011 clearly delineate the powers of the respective Commissioner for the purpose of section 47 of the Act. It is contended that after transfer of the aforementioned officer, w.e.f. 04-01-2013, he was not the Commissioner exercising jurisdiction over the case of the petitioner and, hence, does not qualify to be the "Commissioner" for the purposes of section 47 in the case of the petitioner. He further contends that the appointment of a Chief Commissioner does not change the complexion as section 47(1) requires the Commissioner or his delegatee to file the reference.

3. In reply, learned counsel for the petitioner department vehemently submit that the power of attorney and the affidavit were signed much before the date of relinquishment of the charge by the said officer, therefore, instant reference has been filed by a competent person. Further submit that date of filing of the reference is not relevant and dates of signing the power of attorney and affidavit be considered for the purpose of assessing the maintainability of the instant reference.

4. We have gone through the record of the case and have carefully gone through the Act and the Notifications issued thereunder.

5. In order to fully understand the scope and extent of the authority enjoyed by the Commissioner to prefer an application (Reference) against the order of the Appellate Tribunal before the High Court in terms of section 47(1) of the Act, it is important to

consider the structure of administrative tax governance under the Act. This is visible from the nature of appointments of the officers and the scope of the powers enjoyed by them under the Act. Section 30 provides a list of officers of Sales Tax (or Inland Revenue) who are appointed by the Federal Board of Revenue in relation to any area, person or class of persons. This means that the officers mentioned in section 30 have a specific jurisdiction correlated to an area or person or class of persons. This specific nature of jurisdiction is reaffirmed in section 31 of the Act, where the officer of Inland Revenue is under an obligation to exercise such powers and discharge such duties as are conferred or imposed on him under this Act. The above provisions show that in order to achieve an architecture of effective tax governance in the country, the officers of the Inland Revenue have been assigned specific jurisdictions based on area or person or class of persons and they can only operate within the said specified domain. Even though the officers enjoy a generic nomenclature e.g., "Commissioner of Inland Revenue" but they exercise power only within their delineated sphere permitted under the Act. In the present case when sections 30 and 31 are read with Notifications dated 1.3.2011, only Commissioner Inland Revenue (Zone-II), Large Taxpayers Unit enjoys jurisdiction over the petitioner Company, which appears at serial No.96 with NTN No.0225862 under the said Notifications. This specific circle of power assigned to each officer goes to the root of effective tax governance under the Act.

6. Section 47(1) of the Act authorizes a "Commissioner" to prefer an application/reference against the order of the Appellate Tribunal before the High Court. It also authorizes the said "Commissioner" to delegate the said power to an officer of Inland Revenue not below the rank of Additional Commissioner. Reading of section 47(1) along with sections 30 and 31 of the Act and the Notification issued thereunder means the "Commissioner" under section 47(1) of the Act is the Commissioner enjoying jurisdiction over the petitioner Company i.e., Commissioner Inland Revenue (Zone-II), LTU, Lahore in terms of Notification dated 1.3.2011. Therefore, it is only the said Commissioner who can prefer an application/reference against the order of the Appellate Tribunal in the case of the petitioner before the High Court and no other Commissioner. This structure of governance has to be strictly followed in terms of sections 30 and 31 of the Act. It cannot be said that any Commissioner in the country can assume jurisdiction

over the case of the petitioner and file a reference against the decision of the Appellate Tribunal passed in favour of the petitioner. Any such step would lead to chaos and demolish the structure of tax administration built under sections 30 and 31 of the Act. Further, section 47(1) of the Act specifically envisages "Commissioner" as the highest authority authorized to file a reference. Therefore, no other officer of Inland Revenue, even higher in rank, can file a reference under the said provision.

7. Section 47(1) also shows that the authorization has to be valid at the time when the application/reference is preferred before the High Court. Therefore, the cut-off date is the date of the filing of the reference. In this case, admittedly, on the date of filing of the instant reference i.e., 28-01-2013 Shafqat Mahmood was no more the Commissioner Inland Revenue (Zone-II), Large Taxpayers Unit, Lahore but had actually become the Chief Commissioner Inland Revenue (OPS), Regional Tax Office, Lahore. The submission of the learned counsel for the petitioner that one Shafqat Mahmood had signed the power of attorney, as well as, the affidavit while he was the Commissioner Inland Revenue (Zone-II), LTU, Lahore and, therefore, the instant reference is maintainable, is without force because the cut-off point is the time when the reference is filed before the High Court and, admittedly, at the time of the filing of the said reference, the said officer was not the Commissioner Inland Revenue enjoying territorial jurisdiction over the petitioner Company.

8. In this view of the matter, we are of the view that the instant reference has been filed by an unauthorized person and the same is not maintainable, resultantly, the questions of law raised in this reference are not required to be answered. The instant reference is, therefore, **dismissed** on the ground of maintainability. The petitioner-department is, however, free to file a fresh reference after obtaining the requisite authorization under the law, if so advised, subject to the question of limitation.

9. Office shall send a copy of this judgment under the seal of the Court to the learned Appellate Tribunal Inland Revenue Lahore as per section 47(5) of the Act.