

**[Inland Revenue Appellate Tribunal]**

*Before Ch. Anwaar ul Haq, Judicial Member and  
Muhammad Akram Tahir, Accountant Member*

**Messrs RUPALI POLYESTER LTD.**

versus

**COMMISSIONER INLAND REVENUE,  
LTU, LAHORE and others**

**S.T.A. No.300/LB of 2012, decided on 14th October, 2013.**

Safdar Ali, Tax Manager for Appellant.

Abdul Jawwad, D.R. for Respondent.

Date of hearing: 14th October, 2013.

**ORDER**

**CH. ANWAAR UL HAQ (JUDICIAL MEMBER).**---This appeal has been filed by a registered person (limited company) against the Order-in-Appeal No.44 dated 26-4-2011 passed by the Commissioner Inland Revenue (Appeals-I), Lahore precisely on the following grounds:--

- *That the respondent No. 1 was legally bound to pass the order under within 120 days as required by first proviso to sub-section (2) of section 45B of the Act whereas the respondent No. 1 has passed the order-in-appeal in 233 days hence the order is barred by time and liable to be quashed on this score alone.*
- *That the appellant has specifically agitated the power of issuance SCN under section 36 of the Act read with S.R.O. 555(I)/1996 dated 1-7-1996 but no where in the order-of-appeal it could get any place so the order-in-appeal passed by the*

respondent No. 1 by ignoring the basic and primary issue regarding defect in jurisdiction with reference to section 36 of the Act read with S.R.O. 555(I)/1996 dated 1-7-1996 has made the order-in-appeal of no legal effect. Reliance is placed on a case reported as PLD 1989 Lah. 47 wherein the court held that:

"where the initial order or notice is void all subsequent proceedings, order or super structure built on it are also void...."

That the learned respondent No. 1 has been failed to appreciate that S.R.O. 555(I)/1996 dated 1-7-1996 has been issued specifically to empower the adjudicating officer of sales tax for issuance of SCN for recovery of tax under section 36 of the Act and not under section 45 of the Act."

2. Relevant facts giving rise to this appeal are that the appellant derives income from manufacture of polyester products. The audit of the appellant was conducted for the tax period 2008 to 2009 and it was found that the appellant did not pay sales tax on the supply of waste bags i.e. PP Bags, PTA Bags, Polythene Liners, and also supplied empty jumbo PTA Bags to its sister concern Messrs Rupali Limited without charging sales tax. In consequence of the observations made by the audit team, the concerned Assistant Commissioner issued letter to the appellant, in response to which the appellant vide its letter dated 26-4-2010 had agreed to adjust the liability of principal amount Rs.538,895 against its due refund. However, the default surcharge and penalty was contested by the appellant. Consequently, proceedings under sections 11(2) and 36(1) read with section 34 and penalty under Serial No.5 of the Table of section 33 of the Sales Tax Act, 1990 were initiated through show-cause notice dated 10-5-2010. In response to such notice the appellant inter alia submitted that PP bags and PTA Bags and Polythene Liners were covered under code 6305-3300 and were zero rated vide S.R.O. 621(I)/2005 dated 17-6-2005. It was further submitted that there was misconception between Textile Sector and FBR on the charge of sales tax on these items and ultimately this misconception was removed by issuing a letter vide C.No.P(10)STT/2005 dated 22-6-2005 by the Board. It was requested that default was neither wilful nor deliberate. The learned Assistant Commissioner Inland Revenue was not convinced with the submissions of the appellant because in her view that the violation of the provisions of law was confirmed by the appellant by its own action of agreeing to the adjustment of principal amount of Rs.538,895 from its pending refund and thus assessment order dated 16-8-2010 was passed raising a tax demand of Rs.538,895 along with default surcharge and penalty under section 33(5) of the Sales Tax Act, 1990.

3. The appellant assailed the said order before the first appellate

authority on legal as well as factual grounds as stated above. The learned first appellate authority also did not agree with the submissions of the appellant and accordingly dismissed the taxpayer's appeal through a speaking order dated 26-4-2011.

4. The learned AR assailed the impugned order before us on the grounds mentioned above as well as that the learned first appellate authority was legally bound to pass an order within 120 days in terms of first proviso to subsection (2) of section 45B of the Sales Tax Act, 1990 whereas in the instant case the order was passed after expiry of 120 days and thus, according to the learned AR, the impugned order is time barred. In support of the contention the learned AR also placed reliance on case law reported as PLD 1989 Lah. 47 wherein it has been held that **"where the initial order or notice is void all subsequent proceedings, order or super structure built on it are also void."** He further submitted that issuance of show-cause notice and on the basis thereof passing the order-in-original was without jurisdiction as having been issued/passed by an Officer of Inland Revenue not competent in terms of S.R.O. 555(I)/1996 dated 1-7-1996 holding the field at the relevant time. He submitted that the pecuniary jurisdiction of the Assistant Commissioner was to deal with the cases involving amount of tax not exceeding five hundred thousand rupees whereas the show-cause notice was issued for the alleged amount of Rs.538,895 exceeding such limit, thus, the Assistant Commissioner Inland Revenue was not competent to issue the show-cause notice or adjudicate the matter or passed order-in-original being beyond the said monetary limit provided in the above referred S.R.O. Reliance was placed on an unreported judgment of this court in Appeal No. S.T.A. No.871/LB/2012 dated 16-10-2012. He further contended that the said S.R.O. remained dormant till the omission of section 45 of the Sales Tax Act, 1990 i.e. 28-9-2009, the said S.R.O. became applicable on omission of the said section. He contended that S.R.O. 555(I)/1996 dated 1-7-1996 was operative and holding the field till 1-6-2012 i.e. the date it was rescinded by the Federal Board of Revenue vide S.R.O. 594(I)/2012 dated 1-6-2012.

5. The learned DR on the other hand while opposing the arguments advanced by the learned counsel for the appellant supported the impugned order and contended that S.R.O. 555(I)/1996 dated 1-7-1996 only issued in respect of officers of Collectorates and not the Officer of Inland Revenue and on omission of section 45 from the Sales Tax Act, 1990, every Officer of Inland Revenue was competent to issue show-cause notice and adjudicate the case irrespective of pecuniary jurisdiction. He further contended that the show cause notice was rightly issued under sections 11(2) and 36(1) of the Sales Tax Act, 1990 and the Assistant Commissioner Inland Revenue was competent to adjudicate the matter.

6. We have considered the arguments put-forth by the learned representatives of both the sides and perused the available record and also perused the judgments cited at bar. In our considered view, the pivotal issue that arises out of the impugned order and is required to be deliberated upon is that whether or not the first adjudicating authority the learned Assistant Commissioner Inland Revenue could assume jurisdiction in absence of sections 11(3) and section 45 of the Sales Tax Act, 1990 and under sections 11 and 36 of the Sales Tax Act, 1990 in respect of those cases where the amount of tax involved exceeds five hundred thousand rupees. To appreciate the points raised by the appellant, it is necessary to narrate briefly the history of the legislation on the subject at which the powers were given to the adjudicating officers to adjudicate upon the matters relating to sales tax. The Sales Tax Act, 1990 enabled the Federal Board of Revenue to frame rules, issue notifications, orders among others, for the purposes of this Act. In pursuance thereof section 11(3) since repealed, of the Sales Tax Act, 1990 empowered the Federal Board of Revenue *"to issue a notification in the official Gazette, specify the officers of sales tax authorized to take action under the provisions of subsection (1) and subsection (2)."* By virtue of this power, the Federal Board of Revenue issued a Notification S.R.O. 555(I)/1996 dated 1-7-1996. According to the said notification powers had been given to the officers of sales tax to adjudicate the cases involving assessment of sales tax, charging of additional tax, imposition of penalty and recovery of amount erroneously refunded subject to limitation and conditions as specified therein. This notification was replaced by a permanent legislation i.e. section 11(3) of the Sales Tax Act, 1990 was omitted and section 45 substituted by virtue of the Finance Ordinance, 2000 which also contained a similar powers to the Officers of Sales Tax given in the earlier Notification S.R.O. 555(I)/1996 dated 1-7-1996. Subsequently the *"Inland Revenue Services"* (IRS) Department was created by the Revenue Division vide Office Memorandum No. F-6/2/2009-CP-II dated 12-9-2009 with the intention to bring the Federal Excise Act, 2005, Sales Tax Act, 1990 and Income Tax Ordinance, 2001 under one roof. Against this back ground *"Finance Amendment Ordinance, 2009"* was promulgated by virtue of which section 45 of the Sales Tax Act, 1990 and section 31 of the Federal Excise Act 2005 was omitted. These amendments were continued in force till 5-6-2010 through subsequent *"Finance Amendment Ordinance, 2010"* and finally through *"Finance Act, 2010"* aforesaid amendments were saved with effect from 6-6-2010 which are still continued in the respective statutes.

7. We shall now proceed to discuss the principal point argued before us in respect of the Notification S.R.O.555(I)/1996 dated 1-7-1996 as to whether this notification was reactivated and in force after the

date when section 45 was omitted. To appreciate this issue it will be appropriate to reproduce aforesaid S.R.O. here under:--

\*GOVERNMENT OF PAKISTAN  
CENTRAL BOARD OF REVENUE  
SALES TAX WING

\*\*\*

Islamabad, the 1st July, 1996

**NOTIFICATION**  
**(SALES TAX)**

S.R.O. 555(I)/96.---In exercise of the powers conferred by subsection (3) of section 11 and section 36 of the Sales Tax Act, 1990, the Central Board of Revenue is pleased to authorise the officers of sales tax specified in column (2) of the table below to adjudicate the cases involving assessment of sales tax, charging of additional tax, imposition of penalty and recovery of amount erroneously refunded subject to limitations and conditions as are specified in column (3) of the said table:--

TABLE

S. No.	Designation of Officer	Limitations and Conditions
(1)	(2)	(3)
1.	Superintendent/Senior Auditor.	Cases falling under subsection (1) of section 11 of the Act.
2.	Assistant Collector	Cases falling under subsection (2) of section 11 and section 36 of the Act, provided that the amount of tax involved or the amount erroneously refunded does not exceed five hundred thousand rupees.
3.	Deputy Collector	Cases falling under subsection (2) of section 11 and section 36 of the Act provided that the amount of tax involved or the amount erroneously refunded does not exceed one million rupees.

4.	Additional Collector	Cases falling under subsection (2) of section 11 and section 36 of the Act without any restriction as to the amount of tax involved or amount erroneously refunded.
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Amended vide S.R.O. 1318(I)/98 dated 28-11-1998"

8. Before proceeding further, it would be convenient to consider the nature of the said notification which is clearly a procedural notification giving the powers to the Officers of Sales Tax Collectrate to adjudicate upon the matters in respect of the cases involving assessment of sales tax, charging of additional tax, imposition of penalty and recovery of amount erroneously refunded subject to limitation and conditions as specified therein. This notification does not create any right or liability. We have already seen that this notification was replaced by a permanent legislation, section 11(3) of the Sales Tax Act, 1990 was omitted and section 45 substituted by the Finance Ordinance, 2000. Subsequently, Finance Amendment Ordinance, 2009 was promulgated by virtue of which section 45 of the Sales Tax Act, 1990 and section 31 of the Federal Excise Act, 2005 was omitted. These amendments were continued in force till 5-6-2010 through subsequent Finance Amendment Ordinance, 2010 and finally through Finance Act, 2010 the amendments were saved in the said Acts with effect from 6-6-2010 which are still continued in the statutes. Notifications issued under the said provisions have not been saved either in the Sales Tax Act, 1990 or through any notification. As explained by Lord Reading C.J. in *Watson v. Winch*:--

*"It has been long established that, when an Act of Parliament is repealed, it must be considered (except as to transactions passed and closed) as if it had never existed.....It would follow that any bye-law made under a repealed statute ceases to have any validity unless the repealing Act contains some provision preserving the validity of the bye-law notwithstanding the repeal."*

As the parent section 11(3) of the Sales Tax Act, 1990 under which the Notification S.R.O. 555(I)/1996 was made has been repealed without any saving clause for this notification.

9. We have in our mind section 24 of the General Clauses Act, 1897 and if the submission of the learned AR that the notification would be a bye-law that would have continued notwithstanding the repeal of section 11(3) of the Sales Tax Act, 1990 is accepted then it will be in

conflict with section 24 of the General Clauses Act, 1897. Section 24 of the General Clauses Act, 1897 is reproduced hereunder:--

**Section 24.**

*"Where any Central Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order scheme, rule form or by-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under S. 5 or 5A of the Scheduled Districts Act, 1874, or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section." [emphasis supplied]*

We consider that this submission is entirely without force and in this conclusion we find support from Interpretation of Statute by Craies on Statute Law, 6th Edn. Page 334: which reads as under:--

*"If the statute under which bye-laws are made is repealed, those bye-laws are impliedly repealed and cease to have any validity unless the repealing statute contains same provision preserving the validity of the bye-law notwithstanding the repeal. This follows from the rule .... when an Act of Parliament is repealed it must be considered (except to transactions passed and closed) as if it had never existed."*

10. After creation of Inland Revenue Services (IRS) Department, section 30(3) of the Sales Tax Act, 1990 was substituted through Finance Act, 2010 which only empowered Commissioner Inland Revenue to direct their subordinate Officers to perform functions in respect of such persons or classes of persons or such areas as the Commissioners may direct. Section 30(3) of the Sales Tax Act, 1990 is reproduced hereunder:--

**Section 30(3).**

*"Additional Commissioner Inland Revenue, Deputy Commissioners Inland Revenue, Assistant Commissioner Inland Revenue, Superintendent Inland Revenue, Inland Revenue Audit*

Officer, Inland Revenue Officer, Inspector Inland Revenue, and officer of Inland Revenue with any other designation shall be sub-ordinate to the Commissioner Inland Revenue and shall perform their functions in respect of such persons or classes of persons or such areas as the Commissioners, to whom they are subordinate, may direct." [emphasis supplied]

By virtue of the power given in the aforesaid section, the Commissioners Inland Revenue issued jurisdictional orders for their subordinate officers and directed them to perform their functions in respect of such persons or classes of persons or such areas as they were directed. According to the said jurisdictional orders powers had been given to the Officers of Inland Revenue inter alia to adjudicate the cases involving assessment of sales tax, charging of additional tax, imposition of penalty and recovery of amount erroneously refunded subject to limitation and conditions as specified therein. By following the jurisdictional order issued by Commissioner Inland Revenue, the learned Assistant Commissioner Inland Revenue had rightly passed the Order-in-Original dated 16-8-2010. Whereas, the S.R.O. 555(I)/1996 dated 1-7-1996 was inconsistent with the provisions of section 30(3) of the Sales Tax Act, 1990 and only deals with the officers of defunct Customs, Excise and Sales Tax group cadre. The Honorable Supreme Court of Pakistan in the case titled as A.R. Awan and 2 others v. City District Government, Karachi reported as 2011 SCMR 691 held that:--

*"It is not for the court to extend the scope of the Act on the ground of convenience when the language of the law is clear beyond doubt."*

11. We have also observed that the FBR vide S.R.O. 594(I)/2012 dated 1-6-2012 statly while exercising powers under section 11 of the Sales Tax Act, 1990 rescinded S.R.O. 555(I)/1996 dated 1-7-1996, reproduced here under:--

**"GOVERNMENT OF PAKISTAN  
MINISTRY OF FINANCE, ECONOMIC AFFAIRS,  
STATISTICS AND REVENUE  
(REVENUE DIVISION)**

\*\*\*\*\*

Islamabad, the 1st June, 2012.

**NOTIFICATION  
(SALES TAX)**

S.R.O. 594(I)/2012.---In exercise of the powers conferred by clause (46) of section 2, clause (b) of subsection (2) of section 3,



section 11, clause (a) of subsection (2) of section 13 and section 36 of the Sales Tax Act, 1990, the Federal Government is pleased to rescind the following Notifications, namely:--

- (i) No. S.R.O. 555(I)/1996, dated the 1st July, 1996;
- (ii) No. S.R.O. 849(I)/1997, dated the 25th September, 1997;
- (iii) No. S.R.O. 103(I)/2005, dated the 3rd February, 2005;
- (iv) No. S.R.O. 15(I)/2006, dated the 6th January, 2006; and
- (v) No. S.R.O. 644(I)/2007, dated the 27th June, 2007.

2. This Notification shall take effect on and from the 2nd day of June, 2012.

12. In our firm view, at the time of issuance of aforesaid rescinding Notification dated 1-6-2012, the provisions of subsection (3) of section 11 of the Sales Tax Act, 1990 were not available on the statute book, where-under S.R.O. 555(I)/1996 was issued. Therefore, it was a futile exercise on the part of the FBR as the said S.R.O. had already lost its legal efficacy since the date of enforcement of the Finance Ordinance, 2000 where under subsection (3) of section 11 of the Sales Tax Act, 1990 was omitted. The learned AR also having no answer to the query, as to whether at the time of rescinding notification, any other S.R.O. was issued or amendment was brought on the statute book for assumption of jurisdiction to any authority regarding performing the function of adjudication, except the powers as given under section 30(3) of the Sales Tax Act, 1990.

13. We have also minutely examined the judgment dated 16-10-2012 of this Tribunal rendered in S.T.A. No. 871/LB/2012 relied upon by the AR, on the point of pecuniary jurisdiction in terms of 555(I)/1996 dated 1-7-1996, relevant portion of the said judgments is re-produced here under:--

**S.T.A. No.871/LB/2012**  
**Judgment dated 16-10-2012**

- "(v) He further argued that the Assistant Commissioner Inland Revenue/Audit officer in the subject case was not competent to issue the show-cause notice and to adjudicate the matter in view of the provisions of S.R.O. 555(I)/1996 dated 1-6-1996 which S.R.O. is still in the field. In terms of the said S.R.O., an Assistant Collector (now Assistant Commissioner) could adjudicate the cases falling under subsection (2) of section 11 and section 36 of the act provided that the amount of tax involved or the amount erroneously refund did not exceed

Rs.500,000. The impugned adjudication by the adjudicating authority was, therefore, illegal and void ab initio. The counsel relied on the judgment of this Appellate Tribunal in S.T.A. No.530/LB/2011 and S.T.A. No.578/LB/2011 titled as Messrs Coslab (Pvt.) Ltd. and Messrs Itereos Copy of the said judgment was also placed on record"

\*(iii) We also agree with the contention of the learned counsel for the respondent regarding pecuniary jurisdiction of the Assistant Commissioner. Although, the this argument was not pleaded at first appeal stage by the respondent but as per dictum of apex court in referred judgment reported at PTCL 2007 PLC 64 that pure question of law can be raised at any stage of proceedings. The issue of pecuniary jurisdiction of the officers of Inland Revenue under S.R.O. 555(I)/1996 has already been settled by another bench of this Tribunal in S.T.A. No.530/LB/2011 and S.T.A. No.578/LB/2011 and we concur with the finding in the said judgment. Consequently, it is held that the Assistant Commissioner Inland Revenue Audit officer who issues the show-cause notice and passed the Assessment Order, therefore, cannot be assumed to have been passed under the particular statute and is held to be void ab initio."

**[emphasis supplied]**

14. In addition to aforesaid judgment, we have also examined the following judgments produced before us in some other appeals on the subject. The relevant portion of these judgments are as under:--

**S.T.As. Nos. 530 and 578/LB/2011**

**Judgment dated 11-10-2011**

"4. The learned AR appearing on behalf of the appellant contended that the show-cause notice as well as order-in-original is beyond jurisdiction of the Deputy Commissioner of Inland Revenue in terms of S.R.O. 555(I)/1996 dated 1-7-1996 hence the impugned order is void ab initio. Under the said notification issued by the Federal Board of Revenue in terms of section 36 of the Sales Tax Act, 1990, the Deputy Commissioner of Inland Revenue has been authorized to adjudicate the cases involving assessment of sales tax, charging of additional tax and imposition of penalty provided that the amount of tax involved does not exceed Rs.1,000,000 whereas in the instant case, the learned Deputy Commissioner had been pleased to adjudicate the case involving sales tax of Rs.17,503,680. Reliance has been placed on the judgment of the Tribunal reported as 2011 PTD (Trib.) 1943."

"9. We also find ourselves in full agreement with the arguments of learned AR that the show cause notice issued by the Deputy Commissioner was beyond his pecuniary jurisdiction. It has already been held by the Tribunal in its judgments in the appeals supra that a notice issued without jurisdiction is illegal and unlawful and no action can be taken against a citizen in pursuance thereof. It has also been held in the case reported as 2006 PTD 219 and 2011 PTD (Trib) 1943 that an order without jurisdiction is a fraud on the law and can never be assumed to have been passed under the particular statute."

[emphasis supplied]

**S.T.A. No. 55/LB/2012**  
**Judgment dated 6-4-2012**

"The issue of pecuniary jurisdiction of the officer of Inland Revenue under S.R.O. 555(I)/1996 dated 1-7-1996 has already been settled by another bench of this Tribunal in S.T.A. No.530/LB/2011 and S.T.A. No. 578/LB/2011 and we concur with the findings in the said judgment. Consequently, it is held that the Assistant Commissioner/Inland Revenue Officer Audit Officer, who issue the show cause notice and passed the order-in-original therefore, cannot be assumed to have been passed under the particular statute and is held to be void abinitio."

[emphasis, supplied]

**S.T.A. No.579/LB/2012**  
**Judgment dated 18-10-2012**

"Perusal of the aforesaid provision clearly shows that the Deputy Collector appearing at Serial-3 of the Table to S.R.O. 555(I)/1996 dated 1-7-1996 shall be construed and read as Deputy Commissioner, Inland Revenue and as such the objection of the learned DR that since the Deputy Collector was mentioned in the said notification, thus, it would not apply to the Deputy Commissioner, Inland Revenue is without any substance. It is an admitted position that the tax involved in this case was much beyond the monetary limit prescribed for adjudication of the cases by the Deputy Commissioner, Inland Revenue as Serial-3 of the Table to S.R.O. 555(I)/1996 dated 1-7-1996 and the said S.R.O. remained in the field till 1-6-2012 when it was rescinded by the Federal Government vide S.R.O. 594(I)/2012 dated 1-6-2012. While rescinding S.R.O. 555(I)/1996 dated 1-7-1996, the Federal Government specifically mentioned that the rescinded S.R.O. shall take effect on and from the 2nd day of June, 2012 meaning thereby that the earlier notification

prescribing the pecuniary jurisdiction of the various officers was very much in the field till 1-6-2012 and the contention of the learned counsel for the registered person that the show-cause notice and superstructure built there upon by way of original order and the impugned order was without jurisdiction and coram non iudice....."

".....It is further pointed that the issue regarding jurisdiction of the officer of Inland Revenue to adjudicate tax matters has already been decided by this Tribunal in case "Messrs Global (Pvt.) Ltd. and another v. Commissioner, Inland Revenue, RTO, Multan" vide order dated 11-10-2011 passed in S.T.A. No.530/LB/2011 and S.T.A. No.578/LB/2011 and "Messrs Ibrahim Steel Casting, Dewab Nagar Road, More Emanabad, Gujranwala v. Commissioner Inland Revenue (Appeals), Lahore" vide order dated 6-4-2012 passed in S.T.A. No.55/LB/2012. In the said cases, it was held that the show cause notice, issued by the Deputy Commissioner was beyond his pecuniary jurisdiction in term of S.R.O. 555(I)/1996 dated 1-7-1996 and we find ourselves in full agreement with the aforesaid judgments...."

**S.T.As. Nos. 629 and 630/LB/2012**  
**Judgment dated 24-10-2012**

"..... The case-law relied upon by learned AR shows that the issue regarding jurisdiction of the officer of Inland Revenue to adjudicate tax matters has already been decided by this Tribunal in case of "Messrs Global (Pvt.) Ltd., and another v. Commissioner, Inland Revenue, RTO, Multan" vide order dated 11-10-2011 passed in S.T.A. No. 530/LB/2011 and S.T.A. No.578/LB/2011, and "Messrs Ibrahim Steel Casting, Dewab Nagar Road, More Emanabad, Gujranwala v. Commissioner Inland Revenue (Appeals), Lahore" vide order dated 6-4-2012 passed in S.T.A. No. 55/LB/2012. It was held that the show-cause notice issued by the Deputy Commissioner was beyond his pecuniary jurisdiction in term of S.R.O. 555(I)/1996 dated 1-7-1996 and we find ourselves in full agreement with the aforesaid judgments....."

*[emphasis supplied]*

**S.T.As. Nos. 685 and 686/LB/2012**  
**Judgment dated 21-12-2012**

[2013 PTD (Trib) 537]

"9. The issue of pecuniary jurisdiction of the Inland Revenue under S.R.O. 555 (I)/1996 dated 1-6-1996 has already been settled by some other benches of this Tribunal in S.T.A. No.530/LB/2011, S.T.A. No. 578/LB/2011 and 55/LB/2012

and we agree with the findings in the said judgments. Consequently, it is held that the Deputy Commissioner Inland Revenue who issue the show cause notice and passed the impugned Assessment Order, could not assume the jurisdiction to issue the show cause notice and pass the impugned Assessment Order under the law therefore, the same are without lawful authority and void ab initio."

[emphasis supplied]

**S.T.A. No. 69/LB/2013**

**Judgment dated 26-6-2013**

*"The issue of pecuniary jurisdiction of the Inland Revenue under S.R.O. 555(I)/1996 dated 1-6-1996 has already been settled by some other benches of this Tribunal in S.T.A. No. 530/LB/2011, S.T.A. No. 578/LB/2011 and 55/LB/2012 and we agree with the findings the said judgments. Consequently, it is held that the Deputy Commissioner Inland Revenue who issue the show cause notice and passed the impugned Assessment Order, could not assume the jurisdiction to issue the show cause notice and pass the impugned Assessment Order under the law therefore, the same are without lawful authority and void ab initio."*

[emphasis supplied]

15. It was noted by us that amongst afore-quoted judgment, consolidated judgment dated 11-10-2011 rendered in S.T.A. No. 530/LB/2011 and S.T.A. No. 578/LB/2011 titled as Messrs Coslab (Pvt.) Ltd. and Messrs Itereos was earlier in time and was followed in subsequent judgment dated 6-4-2012 rendered in S.T.A. No. 55/LB/2012. Later on, aforesaid both judgments were made basis by this Tribunal for the cancellation of impugned order-in-original passed by the learned adjudicating authorities on the point of pecuniary jurisdiction. After minute study of all these judgments, it was further noted that these are also silent regarding implications of the "Finance Amendment Ordinance, 2009", "Finance Amendment Ordinance, 2010", "Finance Act, 2010" and the substitution of section 30(3) of the Sales Tax Act, 1990, where under, jurisdiction was vested in the authorities of Inland Revenue Service (IRS) to exercise the powers irrespective of any restriction of pecuniary jurisdiction. In our opinion, this Tribunal while rendering aforesaid judgments was not properly assisted by the taxpayers, hence, these referred judgments are "per incuriam". Further, the law of precedent is not applicable to per-incuriam decision, which carry no binding force. Reliance may be placed on PLD 1963 Kar. 280, 1995 CLC 1453 Kar. and PLD 1991 Kar. 320.

16. In view of the above, we reject the plea of the appellant

regarding the issuance of show-cause notice and affirm the assumption of jurisdiction by the learned Assistant Commissioner Inland Revenue (ACIR) in terms of section 30(3) of the Sales Tax Act, 1990 for issuance of show-cause notice dated 10-5-2010 and passing of Order-in-Original dated 16-8-2010. We further hold that S.R.O. 555(I)/1996 dated 1-7-1996 had lost its validity when the provision of subsection (3) of section 11 of the Sales Tax Act, 1990 was repealed/omitted by virtue of Finance Ordinance, 2000. The subject issue of sub-ordinate legislation is best summarized by the saying that "all the chicks will go with the hen".

17. The second point urged by the learned AR of the appellant was that the appellate authority was legally bound to pass the order within 120 days as required under first proviso to subsection (2) of section 45B of the Sales Tax Act, 1990 has also found no force as first proviso to subsection (2) of section 45B of the Sales Tax Act, 1990 is directory in nature and not mandatory in character. Reliance may be placed on the judgment of the Honourable High Court in the case of Messrs Super Asia Muhammad Din Sons (Pvt.) Ltd. v. Collector of Sales Tax and others cited as 2008 PTD 60 wherein it has been held that:--

*"The claim of the revenue that the prescribed limitation of 45 days for completion of adjudication proceedings as provided through Finance Ordinance, 2000 and enhanced to 90 days by Finance Act, 2000 is merely directory cannot be accepted. It is settled law that where inaction on the part of a public functionary within the prescribed time is likely to affect the rights of a citizen the prescription of time is deemed directory. However, where a public functionary is empowered to create liability against a citizen only within the prescribed time, it is mandatory. The acceptance of contention of the revenue in that regard will make a provision of law redundant and nugatory. Redundancy or superfluity of an Act of Parliament and a provision of law cannot be readily accepted. All the more so when the prescribed limit is beneficial for the citizen and restricts the executive power to touch the pocket of a tax-payer thereby creating certainty that after its expiry even if there was a good case for creation of liability he will not be dragged in."*  
[emphasis supplied]

If for argument sake we accept that the appeal before the learned CIR(A) was time-barred, this will result in confirmation of tax demand against the taxpayer. We are of the opinion that it will not be an acceptable situation for the taxpayer against whom a tax demand which he has contested in appeal before Learned CIR(A) will automatically stand confirmed. This will be a startling result and this kind of interpretation of statute has not been approved by the honourable Higher Judicial fora.

The honourable High Court of Lahore in its judgment reported as 1976 PTD 321 has observed as under:--

*"It is well settled that court should follow the interpretation of law which does not lead to startling results or destructive ends."*

Keeping in view of the above, the legal plea taken by the Learned AR for the time-barring of appeal beyond the limitation period prescribed under first proviso to subsection (2) of section 45B of the Sales Tax Act, 1990 is misdirected and not sustainable in law and therefore, is hereby rejected.

18. As far as the default surcharge and penalty is concerned, we find that the revenue department has already adjusted the adjudged principle amount of sales tax against its refund due in consequence of letter of the appellant mentioned supra. Further at the relevant time the Federal Board of Revenue issued the Notification S.R.O. 648(I)/2011 dated 25-6-2011 which also applies in the appellant's case as well. The S.R.O. in all reads as under:--

*"In exercise of the powers conferred by section 34A of the Sales Tax Act, 1990 and subsection (4) of section 16 of the Federal Excise Act, 2005, the Federal Government is pleased to exempt whole of the amount of default surcharge and penalties payable by a person against whom an amount of sales tax or federal excise duty is outstanding on account of any audit observation, audit report, show cause notice or any adjudication order, or who has failed to pay any amount of sales tax or federal excise duty or claimed inadmissible input tax credit, adjustment, refund, drawback or rebate due to any reason, subject to the condition that the outstanding principal amount of sales tax or federal excise duty is paid by 30th June, 2011.*

*2. Benefit of this notification shall not be available in cases of fraudulent refunds or drawback and other tax frauds."*

Keeping in view the aforesaid S.R.O., we allow the request of the appellant on this score in the light of the aforesaid amnesty order/S.R.O. dated 25-6-2011 and modify the order-in-original dated 16-8-2010 accordingly.

19. The appeal is disposed of in the manner and to the extent as indicated above.