

**Stereo. H C J D A 38.  
Judgment Sheet**

**IN THE LAHORE HIGH COURT  
MULTAN BENCH MULTAN**

**JUDICIAL DEPARTMENT**

**Case No: Tax Reference No. 43 of 2008.**

Commissioner of Income Tax/  
Wealth Tax.                      **Versus**                      M/s Aslam Khan Motor  
Workshop.

**JUDGMENT**

Date of hearing	11.02.2015.
Applicant by:	Syed Khalid Javaid Bukhari, Advocate alongwith Syed Bahadar Ali, Additional Commissioner Inland Revenue, Multan.
Respondent by:	Mirza Muhammad Waheed Baig, Advocate.

**Shahid Jamil Khan, J:-** Following question of law is stated to have arisen out of order dated 21.11.2007 passed by erstwhile Income Tax Appellate Tribunal (“**Appellate Tribunal**”):-

“Whether on the facts and in the circumstances of the case learned ITAT was justified to dismiss the departmental appeal by holding that the Zonal Commissioner can not file appeal against the order passed by him while performing duties as Commissioner Appeals?”

2. Facts briefly are that an objection was raised by taxpayer’s representative, before Appellate Tribunal, regarding maintainability of appeal filed by Commissioner, Bahawalpur Zone, Bahawalpur. It was contended that the Commissioner (Mr. Javaid Aziz) had himself passed the order as Commissioner (Appeals), therefore, he could not file appeal against his own order after becoming Zonal Commissioner. The Appellate Tribunal entertained the objection and dismissed appeal by holding that filing of appeal by same person against his own order was against the norms of justice and fair play.

3. Learned counsel for the applicant submits that signing of memorandum of appeal was merely an administrative/ministerial act. He explains that appointment/transfer as Commissioner of Zone or Commissioner (Appeals) is a routine matter under Section 209 of the

Income Tax Ordinance, 2001 (“**Ordinance**”). The Commissioner had no other option but to sign the memorandum of appeal and file appeal against his own order, after being appointed as Commissioner.

Learned counsel for the respondent taxpayer submits that no one can be judge in his own cause. He has reiterated the observations by Appellate Tribunal.

4. Heard learned counsel for the parties, record perused.

5. Under subsection (1) of Section 131 of the Ordinance, a taxpayer or Commissioner can file appeal before the Appellate Tribunal against an order passed by Commissioner (Appeals). Commissioner is defined under Section 2(13), whereas Commissioner (Appeals) is defined under Section 2(13A) of the Ordinance. Both the provisions, as these stood before substitution by Finance Act, 2010, are reproduced for ease of reference:-

**2. Definitions.** In this Ordinance, unless there is anything repugnant in the subject or context--

“(13) “Commissioner” means a person appointed as a Commissioner of Income Tax under section 208, and includes a taxation officer vested with all or any of the powers, and functions of the Commissioner.”

(emphasis supplied)

“(13A). “Commissioner (Appeals)” means a person appointed as a Commissioner of Income Tax (Appeals) under section 208.”

Perusal of these provisions show that Commissioner and Commissioner (Appeals) are the persons appointed under Section 208 of the Ordinance. Language of Section 2(13) is inclusive in nature; as a taxation officer vested with the powers and functions of Commissioner is also a Commissioner.

6. Section 208 of the Ordinance deals with appointment of income tax authorities, whereas provisions of Section 209 elaborately deal with assignment of jurisdictions to different income tax authorities including Commissioner. Subsection (1) of Section 209 authorizes the Board (Federal Board of Revenue) to assign jurisdiction (powers and functions) to Chief Commissioner, Commissioner and Commissioner (Appeals). Under proviso to subsection (1), the jurisdiction can be

transferred by Board or Chief Commissioner from one Commissioner to another Commissioner. Under subsection (2) of Section 209; the Board and Chief Commissioner empowered, simultaneously, to confer upon or assign any or all powers of Commissioner to any officer of Inland Revenue. The discussed provisions are reproduced hereunder for facility:-

**“209. Jurisdiction of income tax authorities.--** (1) Subject to this Ordinance, the Chief Commissioners, the Commissioners and the Commissioners (Appeals) shall perform all or such functions and exercise all or such powers under this Ordinance as may be assigned to them in respect of such persons or classes of persons or such areas as the Board may direct:

Provided that the Board or the Chief Commissioner, as the case may be, may transfer jurisdiction in respect of cases or persons from one Commissioner to another.

(2) The Board or the Chief Commissioner may, by an order, confer upon or assign to any Officer of Inland Revenue all or any of the powers and functions conferred upon or assigned to the Commissioner, under this Ordinance, in respect of any person or persons of classes of persons or areas as may be specified in the order.

7. Collective reading of Section 2(13) and Section 209(1) and (2) has made it clear that Commissioner, in this case, was not the only authority, who had to file appeal against his own judgment passed as Commissioner (Appeals). He could have asked his immediate superior authority (the Chief Commissioner) to assign the power of filing appeal against that particular order to any other officer of Inland Revenue. The argument by learned counsel for applicant department that being administrative head, he had to sign and file appeal has no force.

8. The argument by learned counsel that signing and filing of appeal was an administrative or ministerial act is also not convincing.

According to Black’s Law Dictionary (Ninth Edition Page 28), **“Administrative Act”**, *“is an act made in management capacity; esp., an act made outside the actor’s usual field”*, and **“Ministerial Act”**, *“an act performed without the independent exercise of discretion or judgment”*.

Provisions of Section 132, as noted *ibid*, recognizes the Taxpayer and Commissioner as parties for the purpose of filing appeal before Appellate Tribunal; in case, anyone of them, feels aggrieved from the order passed by Commissioner (Appeals). The act of filing appeal, after taking decision that department is aggrieved from the order, cannot be termed as Administrative or Ministerial act by any stretch of interpretation. Filing of appeal is one of basic functions of the Commissioner under the Ordinance, therefore, it is not an Administrative Act. Filing of appeal against an order, necessarily, requires application of mind and exercise of discretion, based on personal judgment that department is aggrieved from the order. Under well recognized principles of law, based on fair play, '*no one can sit as a judge on his own decision*'. This principle cannot be defeated by changing caps of designations. Particularly, when a way out was available under the Ordinance of assigning special jurisdiction to any other officer of Inland Revenue for filing such appeals. Necessary corollary of the discussion made above is that answer to the proposed question is in **Affirmative** i.e., against the applicant department.

Reference Application is **decided** against the applicant department.

9. Office shall send a copy of this judgment under seal of the Court to the Appellate Tribunal Inland Revenue as per Section 133(5) of the Income Tax Ordinance, 2001.

**(Muhammad Farrukh Irfan Khan)**  
Judge

**(Shahid Jamil Khan)**  
Judge

**Approved for Reporting.**

Judge

Judge

\*A.W.\*