

IN THE LAHORE HIGH COURT  
MULTAN BENCH MULTAN  
JUDICIAL DEPARTMENT

Case No: Tax Reference No. 11 of 2013.

Commissioner Inland Revenue. Versus Amjad Niaz.

JUDGMENT

Date of hearing	05.03.2015.
Applicant by:	Mr. Abdul Razaq Raja, Advocate.
Respondent by:	M/s Mian Khalid Hussain Mitru and Sh. Inayat-ur-Rehman, Advocates.

Shahid Jamil Khan, J:- The judgment shall also decide Tax Reference Nos. 13, 14 & 19 of 2013, as all these Reference Applications are directed against order dated 22.01.2013 passed by Appellate Tribunal Inland Revenue ("**Appellate Tribunal**") under common facts, proposing same questions of law.

Facts briefly are that the respondent taxpayer being principal filed his returns for salary income for tax years 2008 to 2011 (four years) claiming 75% rebate in tax liability under clause (2) of Part III of Second Schedule to Income Tax Ordinance, 2001 ("**Ordinance**").

The taxation officer amended the assessment order relating to these years by invoking provisions of Section 122(5) of the Ordinance; for the reason that pre-condition of being a full time teacher and researcher employed in non-profit institution or research institution duly recognized by Higher Education Commission was not fulfilled. As a consequence, the claimed rebate of 75% was disallowed for all the years.

2. On being unsuccessful before Commissioner (Appeals), respondent taxpayer filed appeals before Appellate Tribunal.

It was argued that respondent taxpayer was working in relevant tax years in the University, which was recognized by Higher Education Commission. List of Universities, recognized by Higher

Education Commission, was placed before the Appellate Tribunal. A Gazette Notification by Government of Sindh dated 12.05.2000 was also produced wherein Muhammad Ali Jinnah University ("MAJU") Ordinance was published. Clause (1C) Chapter II of Punjab Education Code was also referred wherein a head of institution was required to take at least six periods a week. It was contended that the respondent taxpayer was entitled to rebate under clause (2) of Part III of Second Schedule to the Ordinance, as amended by Finance Act, 2006.

The arguments were opposed by the learned counsel for the applicant department contending that the appellant was working as full time Project Director of Pakistan Sweet Homes MAJU Centre and was taking classes as part time teacher.

The Appellate Tribunal made comparison between the repealed and existing clause (2) of Part III of the Second Schedule. It was found that MAJU was recognized by Higher Education Commission, as per information available on its website. It was also found that the respondent, being head of the institution was taking 18 periods per week, therefore, was a full time teacher, under the clarification issued by Central Board of Revenue ("CBR"). The appeals were allowed consequently.

3. Following questions are proposed for our opinion, stated to have arisen out of the above discussed order:-

1. Whether under the facts and circumstances of the case the Learned ATIR was justified to hold that condition of "Non Profit Institution" in respect of full time teacher and researchers had been removed on account of a comma by substitution of sub-clause (2) of Clause (1) of Part III of second schedule to the Ordinance 2001 vide Finance Act., 2006, whereas the said substitution was made to bring the said Clause in harmony with omission of sub Clause (1) of Clause (1) vide Finance Act., 2005 whereby reduction of tax liability of salaried taxpayers available under different slabs of income was done away with?
2. Whether prior to substitution vide Finance Act 2006 sub-clause (2) of Clause (1) provided for reduction in tax liability of full time teachers and researchers employed in non profit education institution recognized by Higher

Education Commission or a Board of Education "in addition to" the reduction available in sub-clause (1) and the substitution vide Finance Act, 2006 was meant to detach it from sub-clause (1) and not to eliminate the condition of "Non-profit Institutions" as held by the Learned ATIR?"

4. Learned counsel for the applicant department submits that respondent taxpayer was not entitled to the rebate under the Clause (2) after its substitution through Finance Act, 2006, which is reproduced hereunder:-

"(2) The tax payable by a full time teacher or a researcher, employed in a non-profit education or research institution duly recognized by High Education Commission, a Board of Education or a University recognized by the Higher Education Commission, including government training and research institution, shall be reduced by an amount equal to 40% of tax payable on his income from salary."

5. In presence of the findings of fact of Appellate Tribunal that MAJU was recognized by Higher Education Commission and that as per CBR's clarification, the respondent taxpayer was to be treated as full time teacher, there appears no ambiguity that he was entitled to 75% rebate under the above reproduced clause (2). It is neither argued nor discussed in the Appellate Order that the University was not a non profit organization or was not a research institution. Merely because principal/head of an institution was performing administrative duties also, it could not be presumed that he was not a full time teacher. It was not denied in the orders below that research was also being carried out in the University which was organized and administrated by the respondent.

6. The proposed questions, *supra*, are argumentative in nature, therefore, cannot be answered in its form, therefore, the question is resettled as under:-

"Whether respondent taxpayer being head of the institution/principal was entitled to rebate under sub-clause (2) of Clause (1) of Part III of Second Schedule to the Income Tax Ordinance, 2001?"

7. For the reasons noted above, our answer to the resettled question is in **Affirmative** i.e., against the applicant department.

T. R. No. 11/2013.

Reference Applications are decided against the applicant department.

8. 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.

*Akbar*  
(Ali Akbar Qureshi)  
Judge

*Sd*  
(Shahid Jamil Khan)  
Judge

\*A.W.\*

Application No. 4346  
 Date of Service of Application 11-3-15  
 Date of 11-3-15  
 No. of 54/P  
 Co. §  
 Ur 2  
 Re 2  
 Ag 10  
 Court 10  
 Title 10  
 Name of Officer 10  
 Date of receipt of the 2-9-15  
 Date of preparation 03-4-15  
 Date of issuance of Copy 03-04-15

EXAMINER COPY SUPPLY SECTION  
 03-04-15  
 AUTHORIZED UNDER ARTICLE 87  
 OF GOVERNMENT RESOLUTION ORDER 1984  
 03-04-15  
 EXAMINER COPY  
 LAYERS COURT  
 MULTAN BENCH MULTAN

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IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN

T.R.NO. 11 /2013 FOR PRIVATE USE

COMMISSIONER INLAND REVENUE  
MULTAN ZONE, REGIONAL TAX OFFICE,  
MULTAN

VERSUS

MR. AMJAD NIAZ  
C/O PUNJAB COLLEGE OF COMMERCE,  
CITY CAMPUS, MULTAN  
Civilised Upper Middle Class  
Carun-i-Shahrah, Multan, 60000  
03-384

INCOME TAX REFERENCE U/S 133(1) OF THE INCOME TAX ORDINANCE, 2001  
AGAINST ITA NO.1736/LB/2012 DATED 22-01-2013 IN THE CASE OF  
MR. AMJAD NIAZ, C/O PUNJAB COLLEGE OF COMMERCE, CITY CAMPUS,  
MULTAN FOR TAX YEAR 2008 – NTN 0176167-6

The taxpayer, an individual, derives income as a salaried individual employed as Principal Punjab College of Commerce, City Campus, Multan. The taxpayer filed returns for the Tax Years 2008 to 2011 and worked out tax after claiming 75% rebate in tax liability under Sub Clause (2) of Clause (1) of Part-III of the Second Schedule to the Income Tax Ordinance, 2001 (hereinafter called the Ordinance). The Additional Commissioner Inland Revenue, Audit Range, Zone-I, RTO, Multan observed that the taxpayer being administrative Head of a Private Sector College was not entitled to claim reduction @75% in tax liability under Sub Clause (2) of Clause (1) Part-III of Second Schedule to the Income Tax Ordinance, 2001. The benefit of the said clause was available to "full time teachers and researchers" employed in "non-profit" educational or research institutions duly recognized by Higher Education Commission, a Board of Education or a University recognized by the High Education Commissioner. The assessments deemed to have been framed under Section 120 of the Income Tax Ord., 2001 for the year under consideration were found to be erroneous in so far as prejudicial to the interest of revenue. Show Cause notices were issued time and again. The appellant submitted his written reply on 26-03-2012 which was duly considered and the Additional Commissioner Inland Revenue, Audit Range-I, Zone-I, RTO, Multan amended the assessments for the Tax Years under consideration by invoking provisions of Section 122(5A) of the Income Tax Ordinance, 2001. Being aggrieved with treatment the taxpayer preferred an appeal before the Commissioner Inland Revenue (Appeals) who vide his Appellate Order No.434 to 437 dated 29-05-2012 decided in favour of the Department. The taxpayer preferred second appeal before the Appellate Tribunal Inland Revenue, Lahore who vide Appellate Orders No.1736 to 1739/LB/2012 dated 22-01-2013, vacated the impugned order of the Learned CIR(Appeals) and cancelled all the four Orders for the years under consideration.

14618  
Filed Today After 11.00 a.m.  
Assistant Registrar (Judicial)  
15-5-13

Page.....Cont/2  
14820  
Filed Today After 9.30 A.M.  
Assistant Registrar (Judicial)  
17-5-13







The Learned ATIR was not justified to vacate the impugned order of CIR(Appeals) and cancel all the four Orders passed by the Additional Commissioner Inland Revenue. Therefore, this office intends to file reference before the Honourable High Court on the basis of following Questions of Law:-

1. "Whether under the facts and circumstances of the case the Learned ATIR was justified to hold that condition of "Non Profit Institution" in respect of full time teacher and researchers had been removed on account of a comma by substitution of sub-clause (2) of Clause (1) of Part III of second schedule to the Ordinance 2001 vide Finance Act., 2006, whereas the said substitution was made to bring the said Clause in harmony with omission of sub Clause (1) of Clause (1) vide Finance Act., 2005 whereby reduction of tax liability of salaried taxpayers available under different slabs of Income was done away with?"
2. "Whether prior to substitution vide Finance Act 2006 sub-clause (2) of Clause (1) provided for reduction in tax liability of full time teachers and researchers employed in non profit education institution recognized by Higher Education Commission or a Board of Education "in addition to" the reduction available in sub-clause (1) and the substitution vide Finance Act., 2006 was meant to detach it from sub-clause (1) and not to eliminate the condition of "Non profit Institutions" as held by the Learned ATIR?"

14820  
Today After 9.30 A.M.

14618

Application No. 14820  
Date of Application 11-3-15

Today After 11.00 a.m.  
Assistant Registrar (Judicial)

**PRAYER**

It is humbly prayed that the above mentioned questions of law may kindly be answered by giving authoritative and enlightened view thereof. It is further prayed that if any other questions of law arise out of the Tribunal, necessary consequence may also be answered after formulation.

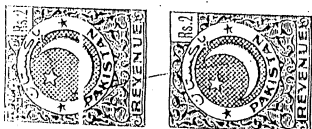
Ag. \_\_\_\_\_  
Cot. \_\_\_\_\_  
Tota. \_\_\_\_\_  
Name of Applicant: **Abdul Razzaq**  
Date of receipt of the application: **23 Nov 2014**  
Date of preparation of copy: **20/11/14**  
Date of issuance of copy: **20/11/14**

APPELLANT

EXAMINER COPY SUPPLY SECTION  
(DR. KHALIL AHMAD)  
Commissioner Inland Revenue  
Multan Zone, RTO, Multan  
ADVISED UNDER ARTICLE 87  
MULHAN DISTRICT JUDICIAL OFFICE  
MULHAN DISTRICT JUDICIAL OFFICE  
MULHAN DISTRICT JUDICIAL OFFICE

**CERTIFICATE**

Certified as per instructions of the applicant/department no reference has been filed earlier before the Honourable Court against the impugned judgment of ATIR No.1736/LB/2012 dated 22-01-2013



Advocate  
Advocate  
25-New Street  
MULHAN