

**APPELATE TRIBUNAL INLAND REVENUE,  
LAHORE BENCH, LAHORE.**

STA No.325/LB/2017  
STA No.326/LB/2017  
STA No.327/LB/2017  
STA No.328/LB/2017

M/s Pakistan WAPDA Foundation, Lahore. ...Appellant  
Versus  
CIR, Zone-VI,CRO, Lahore. ... Respondent

Appellant by: Mian Ashiq Hussain, Adv.  
Respondent by: Mr. Faisal Asghar, DR

Date of hearing: 01-06-2017 Date of order: 03-08-2017

**ORDER**

**CH. SHAHID IQBAL DHILLON (Judicial Member):** The titled appeals have been preferred on behalf of registered person calling in question the impugned consolidated order Nos. 18,19,20,21-A-II/2017, dated 27.01.2017, passed by the learned Commissioner Inland Revenue (Appeals-II), Lahore.

2. Briefly stated, the relevant facts for disposal present appeals are that as per information received it was found by the department that the registered person was involved in tax evasion through making taxable supplies without obtaining STRN and charging sales on various taxable supplies which the appellant earned profit @10%. It was further found that the appellant was involved in the manufacturing of LT and HT coils in the Welding Shop, Machine Shop and Production Shop and replacing transformer oil in the Tank Shop of its Distribution & Power Transformer Reclamation Workshop for which it had charged direct labor, factory overheads and operating/admin expenses and other profit before making supply to relevant DISCOS. On the basis of above, the registered person was called upon to show cause to explain as to why sales tax of Rs.863,932,549/- should not be recovered alongwith default surcharge and penalty. In response, the registered person duly responded by filing explanation, however, the same was discarded by the assessing officer being unsatisfactory. Therefore, the

assessing officer passed the impugned orders directing the appellant to deposit the confronted sales tax alongwith default surcharge and penalty..

3. Being aggrieved, the registered person preferred appeals before the learned CIR(A) who vide impugned consolidated order annulled all the assessment orders in the following manner: -

"11. Contention of the learned AR of the appellant have been considered in the light of available record and cited case laws. Admittedly, the jurisdiction of the appellant was vested with the Corporate RTO and not the RTO-II. However, despite transfer of jurisdiction to CRTO, the order was passed by RTO-II, Lahore which is beyond lawful jurisdiction on this single score alone. It would also be pertinent to point out that if tax is imposed by the department, it has to be adjudicated in a reasonable manner to fulfill all the requirements of the well reasoned order so that it can be legally sustained especially in cases where huge Government Revenue is involved. It is also observed that ex-parte proceedings were finalized and the order passed without giving proper opportunity of being heard: therefore the same is not maintainable under the law: hence annulled accordingly in the light of ATIR Peshawar's judgment cited as 2012 PTD (Trib.) 547. The OIR having lawful jurisdiction is directed to pass the order afresh after according proper hearing opportunity to the appellant through a well reasoned and speaking order determining the resultant liability as per law. The appellant is directed to associate with the department and provide all documents necessary to the proceedings."



4. Before us, the learned AR contended that after having annulled the assessment orders passed by the Deputy Commissioner Inland Revenue, Unit-04, Zone-IV, RTO-II, Lahore, the learned CIR(A) exceeded his jurisdiction in remanding the case for denovo proceedings. He relied upon the judgment of the Division Bench of the Hon'ble Lahore High Court dated 28.10.2013 in STR No.12/2012 in the case of Commissioner Inland Revenue ...Vs...M/s Supreme Tech International. The Hon'ble Lahore High Court held that the Commissioner Inland Revenue(Appeals) is prohibited to remand the case for denovo consideration. It was the case highlighted that law relied upon by the CIR(A) had been overruled. The AR pointed out that there is no ambiguity in Section 45-B(3) of the Sales Tax Act, 1990 (the Act) which is couched in negative language and remand of the case for denovo consideration under Section 45-B is expressly prohibited

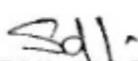
5. When confronted, the DR admitted that the impugned assessment orders had been passed without jurisdiction. He, however, pleaded that in view of the revenue involved, the case should be remanded by this Tribunal for denovo assessment proceedings. The AR rebutted the plea of remand for various reasons:

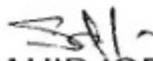
- i) The remand of the case for denovo assessment proceedings would nullify mandatory provisions fixing limitation. Reliance was also placed on the judgment of the Hon'ble Supreme Court of Pakistan cited as 2001 SCMR 838 in the case of Assistant Collector Customs and others Vs....Messrs Khyber Electric Lamps etc in support of the contention that provisions regarding limitation cannot be nullified by remanding the case.
- ii) The Hon'ble Supreme Court of Pakistan has also held in the judgment dated 31.03.2017 in the case of Collector of Sales Tax Gujranwala etc....Vs....M/s Super Asia Muhammad Din and Sons etc. that limitation provided between the issuance of Show Cause Notice under Section 11 and the passing of the assessment order is mandatory. The AR pointed out that the timed barred matters cannot be revived for fresh proceedings.
- iii) The AR also asserted that no loss of revenue was involved as the total output tax had been recovered from the Distribution Companies. Plus and minus of equal amounts in the distribution chain would result in zero revenue. It was asserted that the plea of the DR regarding loss of revenue was baseless.



6. We have heard both side and perused the record. We have carefully gone through the impugned order of the learned CIR(A), operative part of his decision is duly reproduced supra. Admittedly, the impugned assessment order passed by the Deputy Commissioner Inland Revenue was without jurisdiction; hence, it was rightly annulled. The learned CIR(A), however, exceeded his jurisdiction in remanding the case for denovo consideration. Subsection (3) of Section 45-B of the Sales Tax Act, 1990, is unambiguous and clearly prohibits remand of the case by denovo consideration by the Commissioner (Appeals). The Hon'ble Lahore High Court held in the case of CIR...Vs...M/s Supreme Tech International that remand for denovo consideration is prohibited under Section 45B(3) of the Act. Besides, remand in the case will also nullify provisions providing limitation. Statutory limitation cannot be extended through remand. Remand would set at naught the rights already accrued to the appellant. The rival contentions of the parties regarding revenue involvement are not material as the case was decided on the issue of jurisdiction. The appellate authority rightly annulled the impugned assessment order but exceeded its authority in remanding the case for denovo consideration. Accordingly, the consolidated order passed by the CIR(A) in all the four appeals is modified to the effect that his order/direction regarding remand of the case for denovo consideration is vacated

7. The appeals succeed in the above terms.

  
  
(ABDUL NASIR BUTT)  
Accountant Member

  
(CH. SHAHID IQBAL DHILLON)  
Judicial Member