

**Judgment Sheet**

**IN THE LAHORE HIGH COURT,**  
**MULTAN BENCH, MULTAN**  
**JUDICIAL DEPARTMENT**

**I.C.A. No.132/2013**

*In*

*W.P. No.361/2013*

**JUDGMENT**

**Commissioner Inland Revenue**

**Vs.**

**M/s. Crescent Carriers**

**Date of Decision:** 24.04.2017

**Appellant by:** M/s. Tariq Manzoor Sial & Agha Muhammad Akmal Khan, Advocates.

**Respondents by:** Malik Mumtaz Hussain Khokhar, Advocate.  
Rana Muhammad Hussain, Assistant Advocate-General.

**JAWAD HASSAN, J:-** Through this single judgment we intend to decide the instant Intra Court Appeal as well as I.C.A. No.133/2013 and I.C.A. No.140/2013 alongwith applications for condonation of delay (C.Ms. No.2/2013) in all the appeals, as all the same are outcome of impugned judgments dated 11.02.2013 passed by the learned Single Judge passed in W.P. No.361/2013, W.P. No.360/2013 and W.P. No.329/2013 whereby the writ Petitions of the Respondents were allowed. All the Intra Court Appeals have been filed under Section 3 of the Law Reforms Ordinance, 1972, challenging the legality of impugned judgments dated 11.02.2013.

2. Brief facts of the Appeals are that the Appellant issued letter under Section 177(i) of the Income Tax Ordinance, 2001 (the "Ordinance") and requisitioned the books of accounts and relevant record for conducting of audit for the tax year 2011, against which the Respondents filed the above referred writ petitions which were

allowed by the learned Single Judge vide the impugned judgments. Hence, all the abovementioned appeals.

3. At the very outset learned counsel for the Respondents raised objection regarding maintainability of all the appeals being time barred.

4. In reply thereto, learned counsel for the Appellant *inter alia* submitted that alongwith the main appeals, the Appellant has also filed application for condonation of delay in filing the appeal; that the learned Single Judge while passing the impugned judgments has not appreciated the material facts and law on record; that the impugned judgments have been passed in utter disregard of the relevant law; that the learned Single Judge has ignored the fact that before amendment of Section 177 of the Ordinance the Commissioner had the power under Section 177(i)(d) to select the case on the basis of any matter which in the opinion of the Appellant was material for determination of the correct income.

5. We have heard the arguments of the learned counsels for the parties and examined the record available with all the Appeals.

6. At the first instance, we would like to examine the question of limitation. It is pointed out that when the learned counsel for the Appellant was asked to first cross the hurdle of limitation as the impugned judgments were passed by the learned Single Judge on 11.02.2013 and the copies of judgments were delivered to the Department-Appellant on 16.02.2013 but all the above-mentioned appeals were filed on 27.03.2013 with a specific delay of 37 days, he informed that the C.Ms. No.2 of 2013 have been moved by the Appellant, with a request to condone the delay caused in filing of Intra Court Appeals with the prayer that in terms of procedural constrains the permission was to be sought from the Federal Board of Revenue for the purpose of filing all the Intra Court Appeals which directions was received and communicated to the counsel on 18.02.2013.

7. We examined the record which reflects that in the said applications no reason or justification has been extended by the

Appellant justifying such delay in filing the Intra Court Appeals which are the sole basis of the prayer made in the Civil Miscellaneous Petitions for condonation of delay. The only ground/reason for condonation of delay mentioned in the Applications is that "*in terms of procedural constrains the permission was to be sought from the Federal Board of Revenue for the purpose of filing all the Intra Court Appeals which directions was received and communicated to the counsel on 18.02.2013*" which is neither cogent nor confidence inspiring to extend favour for condonation of delay.

8. The limitation provided for filing an appeal from a decree or order of a High Court in the exercise of its original jurisdiction is twenty days from the date of decree or order as provided under Article 151 of the First Schedule provided under section 3 of the Limitation Act, 1908.

9. The judgment passed by the leaned Single Judge was delivered on 16.02.2013 but the instant appeals have been filed after a delay of 37 days. It is a settled position of law that in case of time barred proceedings, defaulting party must explain the delay of each day caused in preferring valid proceedings in accordance with law. Learned counsel for the Appellant has not been able to extend any cogent reason to be believed for condonation of delay, therefore, the delay of about thirty seven (37) days cannot be condoned mere on the applications of the Appellant. Furthermore, as per the C.Ms. No.2/2013 the counsel received directions/recommendations to file the appeals on 18.02.2013 by the Department, even then all the appeals have been filed on 27.03.2013 after about more than one month, which also show negligence on the part of the Appellant and for such delay no explanation has been extended in the said applications. Reliance in this regard can be placed on the case titled *Mst. Khadija Begum and 2 others v. Mst. Yasmeen and 4 others* (PLD 2001 Supreme Court 355) in which, while dealing with the question of limitation it has been categorically held that sufficient cause must be shown

by the person seeking condonation of delay, which means "circumstances beyond control of party concerned" and that, nothing shall be deemed to be done in good faith which is not done with due care and attention. It is also settled law that for purpose of limitation Government cannot be treated differently. Reliance is placed on the case titled Central Board of Revenue, Islamabad through Collector of Customs, Sialkot Dry Port, Samberial, District Sialkot and other v. Messrs. Raja Industries (pvt.) Ltd. through General Manager and 3 others (1998 SCMR 307).

10. We, therefore, adjudge, the delay in filing of ICAs would not become liable to be condoned, as the appellants have failed to show any sufficient reasons for condonation of such delay.

11. In view of above facts and circumstances, the applications for condonation of delay are dismissed, consequently the instant appeal as well as the above referred connected appeals, being badly time barred, are hereby also dismissed.



(ABID AZIZ SHEIKH)  
JUDGE



(JAWAD HASSAN)  
JUDGE

\*M.NAVEED\*

54758  
25-4-77  
25-4-77

TRUE COPY  
No 80517  
EXAMINER COMMANDER  
LAW ENFORCEMENT  
MULLAN BLENCH

4P

8

2

TRUE COPY  
No 80517

405/77  
No 05-5-77  
08-5-77

BEFORE THE HONOURABLE LAHORE HIGH COURT, MULTAN BENCH, MULTAN



I.C.A. No. 132/2013

IN

W.P. No. 361/2013

Commissioner Inland Revenue, Sahiwal Zone, Sahiwal

APPELLANT

VERSUS

M/S. Crescent Carriers, Arifwala Road, Sahiwal  
Through: Wasim Safdar

RESPONDENT

Appeal U/S. 3 of the Law Reforms Ordinance, 1972,  
against the Judgment dated 11-02-2013 in W.P. No.  
361/2013 passed by the learned Single Judge  
whereby the Honorable Judge allowed the  
writ petition.

13108  
Filed Today After 3.30 A.M.

Respectfully Sheweth:-

Assistant Registrar (Judicial)  
26-4-13

Brief facts of the case are:-

1. That the appellant issued letter under section 177(i) of the Income Tax Ordinance, 2001 and requisitioned the books of accounts and relevant record for conducting of audit for the tax year 2011.
2. That the respondent went in writ petition under article 199 of the Constitution of Islamic Republic of Pakistan, 1973 before the Honorable High Court claiming that the appellant is not empowered to issue a notice to the Respondent u/s. 171(i) of the Income Tax Ordinance, 2001. Copy of the Writ Petition is attached herewith as "Annexure-A".

That the above section i.e. 177(i) is reproduced hereunder:-

"177. **Audit:-**(1) The Commissioner may call for any record or documents including books of

accounts maintained under this Ordinance or any other law for the time being of force for conducting audit of the Income Tax affairs of the person and where such record or documents have been kept on electronic data, the person shall allow access to the Commissioner or the officer authorized by the Commissioner for use of machine and software on which such data is kept and the Commissioner or the officer may have access to the required information or data and duly attested hard copies of such information or data for the purpose of investigation and proceedings under this Ordinance in respect of such person or any other person:

Provided that:-

Section 177 is applied on material

Filed Today After 11.00 a.m.

9474

25-3-13

08057