

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT**

**PTR No.389 of 2009**

**Commissioner of Inland Revenue**

**Versus**

**M/s Naila Kareem & others**

**J U D G M E N T**

Date of hearing: 31.05.2021.  
Applicant by: Mr. Sarfraz Ahmad Cheema, Advocate (PTR No.389 of 2009).  
Malik Abdullah Raza, Advocate (PTR No.390 of 2009).  
Mr. Shahzad Ahmad Cheema, Advocate (PTR No.392 of 2009).  
Mr. Adeel Shahid Karim, Advocate (FBR).  
Barrister Ameer Abbas Ali Khan, A.A.G. on Court's call.  
Respondent by: Mr. M. Hamza, Advocate.  
Research by: Mr. Ahmad Zia Ch., Civil Judge / Research Officer, LHCRC.

**MUHAMMAD SAJID MEHMOOD SETHI, J.-** This consolidated judgment shall decide instant Reference Application under Section 27 of the erstwhile Wealth Tax Act, 1963 (“**the Act of 1963**”), along with following connected Reference Applications as common questions of law and facts are involved in these cases:-

1. **PTR No.390 of 2009** titled Commissioner of Inland Revenue v. M/s Naila Kareem & others
2. **PTR No.392 of 2009** titled Commissioner of Inland Revenue v. Ahmad Alam Waseem

2. The following question of law, urged to have arisen out of the impugned order dated 14.10.2009, passed by learned Income

Tax Appellate Tribunal, Lahore Bench, Lahore (“Appellate Tribunal”), has been pressed and argued for our opinion:-

Whether under the facts and in the circumstances of the case, the learned ITAT was justified to dismiss the departmental appeal, mentioning that issuance of notice u/s 16(4) is mandatory whereas the issuance of said notice is discretionary for the DCWT under the Wealth Tax Act, 1963?

3. Brief facts of the case are that the respondent-assessee filed Wealth-Tax returns for the years 1999-2000 and 2000-2001 declaring net wealth at Rs.11,64,400/- and Rs.11,66,400/-, respectively. For the purpose of finalization of assessment, notices under Section 16(2) of the Act of 1963 were issued to the assessee from time to time, but no compliance was made by it. Consequently, assessing officer finalized the assessments *ex parte* under Section 16(5) at Rs.33,25,000/- for each year, vide order dated 30.06.2004. In appeals filed by the assessee, Commissioner (Appeals), vide order dated 18.11.2008, cancelled the assessment order. Feeling dissatisfied, applicant-department preferred appeals before Appellate Tribunal, which were dismissed vide consolidated order dated 14.10.2009. Hence, instant Reference Application.

4. Learned Legal Advisor for applicant-department contends that issuance of notice under section 16(4) of the Act of 1963 is not mandatory rather discretionary under the Act *ibid*. He adds that learned Appellate Tribunal was not justified to dismiss the appeals of applicant-department on this ground. In the end, he submits that impugned orders passed by Commissioner (Appeals) as well as Appellate Tribunal are unsustainable in the eye of law.

5. On the contrary, learned counsel for respondent-assessee defends the impugned order.

6. Arguments heard. Available record perused.

7. The question for our determination is whether issuance of specific notice under section 16(4) of the Act of 1963 to

respondent-assessee was essential pre-requisite before making assessment and determining liability of wealth-tax under section 16(5) of the Act *ibid*, indicating the intention regarding proposed valuation of the impugned assessment or it is discretionary. For facility of reference, Section 16 is reproduced hereunder:-

**“16. Assessment.- (1)** If the Deputy Commissioner is satisfied without requiring the presence of the assessee or production by him of any evidence that a return made under section 14 or section 15 is correct and complete, he shall assess the net wealth of the assessee and determine the amount of tax payable by him or the amount refundable to him on the basis of such return.

**(2)** If the Deputy Commissioner is not so satisfied, he shall serve a notice on the assessee either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the assessee may rely in support of his return.

**(3)** The Deputy Commissioner, after hearing such evidence as the person may produce and such other evidence as he may require on any specified points, and after taking into account all relevant materials which Deputy Commissioner has gathered, shall by order in writing, assess the net wealth of the assessee and determine the amount payable by him as tax or the amount refundable to him.

**(4)** For the purpose of making an assessment under this Act, the Deputy Commissioner may serve on any person who has made a return under sub-section (1) of section 14 or upon whom a notice has been served under sub-section (2) of that section, or who has made a return under section 15, a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as the Deputy Commissioner may require.

**(5)** If any person fails to make a return in response to any notice under sub-section (2) of section 14, or fails to comply with the terms of any notice issued under sub-section (2) or sub-section (4), the Deputy Commissioner, after taking into account all relevant material which he has gathered, shall make the assessment to the best of his judgement and determine the amount payable by the person as wealth-tax or the amount refundable to him on the basis of such assessment.”

Perusal of the aforesaid provisions shows that if the Wealth-Tax Officer has definite information that particulars of net wealth declared in the return under Section 15 were incorrect or incomplete, he may issue notice under Section 16(4) requiring the assessee to furnish such accounts, record or other documents as the Wealth-Tax Officer may require, however, if assessee fails to comply with the terms of said notice, assessment would be made on the basis of available material and application of judicious mind. The above provision does not straight away authorize the Wealth-Tax Officer to make an opinion/ assessment on the basis of information so gathered, rather he is required to issue aforesaid notice to the assessee seeking explanation with documentary evidence, after confronting the information collected. After said notice and failure on the part of assessee to offer satisfactory response, assessment determining liability of wealth-tax or amount refundable to him could be made. From a bare perusal of aforesaid provision of law, it can simply be inferred that for an explanation to be offered by an assessee, he must have been issued a notice, within the contemplation of Section 16(4) of the Act of 1963, without which the assessee would not be able to offer explanation / defence.

8. Although the word “may” has been used in subsection (4), but it has to be read in conjunction with subsection (5) *ibid*, which suggests that issuance of notice under section 16(4) was mandatory in nature, therefore, its strict compliance was imperative and was to be strictly construed. The Hon’ble Superior Courts have time and again laid down various principles and tests to determine whether a provision in a statute is directory or mandatory in nature. The integral test is to ascertain the legislative intent and purpose to be achieved by the application of the provision of law rather than literal approach, and would prefer an interpretation which advances the object of the enactment over that which defeats it. The intention of legislature must govern, and is to be ascertained not only from the phraseology of the provision but also by considering its nature,

the object, and the consequences which would follow from construing it one way or the other. Reference can be made to Province of Punjab through Secretary Excise and Taxation Department, Lahore and others v. Murree Brewery Company Limited (MBCL) and another (2021 SCMR 305), Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal (2021 SCMR 328), Mafizaullah v. Mana Ullah and others (PLD1963 Dacca 318) and Muhammad Asghar and 3 others v. Station House Officer and 2 others (PLD 2020 Lahore 87).

If private rights call for the exercise of the power vested in a public official, the language used, though permissive and directory in form, is in fact preemptory or mandatory as a general rule. Reference can be made to Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal (2021 SCMR 328).

9. To discover true intent of the legislature, careful examination of the scheme of the Act, its real purpose and object is necessary. The purpose of promulgation of the Act of 1963 was to provide for the levy of wealth-tax and provision of section 16(5) also suggests that assessment may generate amounts refundable to the assessee. For correct and exact determination and assessment of wealth-tax or otherwise amounts refundable to the assessee, the Wealth-Tax Officer must have definite, correct and complete information with necessary documentary evidence regarding assets of the assessee. For the said purpose, the legislature has enacted provision of section 16(4) inviting the assessee to bring complete documentary evidence available with it before the Wealth-Tax Officer so that accurate assessment could be made. Therefore, the assessee must have been put to notice confronting the discrepancies / shortcomings with the demand to provide necessary documents / record in terms of section 16(4) and providing opportunity of hearing to the assessee. The Wealth-Tax Officer should have followed the minimum requirement of the principles of natural

justice i.e. *audi alterm partem*. Before taking any action, it is the right of the person to know the facts, without which no one can defend himself. The right to notice means the right of being known. Nobody could be condemned unheard and no act or action which was detrimental, against the right and interest of the assessee could be passed without giving it prior notice and opportunity of hearing as discussed above. Issuance of a proper notice is an essential ingredient of the aforesaid legal maxim. Having put to notice and proper opportunity of being heard were inseparable and inalienable rights of the assessee and could not be denied under any circumstances. The aforesaid principle is to be read into every statute notwithstanding that a right of hearing had not been expressly provided by the statute governing the proceedings. Violation of said principle would be enough to vitiate even the most solemn proceedings and it had to be applied in all judicial and non-judicial proceedings. Before any action is taken, the affected party must be given a notice to show cause the proposed action and seek his explanation. It is a *sine qua non* of the right of fair hearing. Any order passed without giving notice is against principles of natural justice and is void ab initio. Reference can be made to Muhammad Rafique Chaudhary and another v. Muhammad Yaqoob Janjua and 8 others (2016 CLC 1240), Naeem Abbas v. Government of Punjab through Secretary and 4 others [2017 PLC (C.S.) 404], Secretary, Establishment Division Government of Pakistan v. Dr. Muhammad Arif and others [2017 PLC (C.S.) 907], Ch. Basharat Ali v. Pakistan Telecommunication Company Limited and another [2017 PLC (C.S.) 1093], State Life Insurance Corporation of Pakistan through Zonal Head / Attorney and others v. Mst.Shazia Mir Arshad (2017 CLD 1483) and Muhammad Aslam v. Member (Colonies) Board of Revenue Punjab Lahore and others (2019 CLC 1141).

10. It is a principle of long standing that whenever adverse action is being contemplated against a person, a notice and/or opportunity of hearing is to be given to such person. This principle has now been elevated to the status of a fundamental right with the incorporation of Article 10-A in the Constitution of the Islamic Republic of Pakistan. The aforesaid Article stipulates that determination of civil rights and obligations of a person shall be through fair trial and due process. Right to fair trial means grant of proper hearing, it necessitates that no one should be penalized by the decision upsetting and afflicting his right or legitimate expectations unless he was given prior notice of the case, a fair chance to answer it and a fair opportunity to explicate / present the case. Reliance is placed upon Warid Telecom (Pvt.) Ltd. and 4 others v. Pakistan Telecommunication Authority through Chairman (2015 SCMR 338), Suo Motu acting regarding allegation of business deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar attempting to influence the judicial process (PLD 2012 SC 664), Babar Hussain Shah and another v. Mujeed Ahmed Khan and another (2012 SCMR 1235), Suo Motu Case No.4 of 2010 W.P. No.26696/2014 13 (PLD 2012 SC 553), Liaqat Ali Chughtai v. Federation of Pakistan through Secretary Railways and 6 others (PLD 2013 Lahore 413), Shabbir Ahmed v. Kiran Khursheed and 8 others (2012 CLC 1236) and Pakistan Telecommunication Company Limited through duly authorized attorney v. Pakistan through Secretary Cabinet, Islamabad and 2 others (PLD 2020 Sindh 733).

11. It is well settled proposition of law that taxing authorities cannot demand amount without issuing a show cause notice and providing opportunity of hearing and fixing liability in terms of the relevant provisions of law. Reliance is placed on Executive Engineer, Qadirabad Barrage Division, Qadirabad and others v. Ejaz Ahmad (2007 SCMR 1860), Habib Bank Limited v. Ghulam Mustafa Khairati (2008 SCMR 1516), Messrs Bissma Textile Mills

v. Federation of Pakistan and others (2002 PTD 2780), Messrs Kind Traders v. Dy. Collector and 2 others (2008 PTD 1551), Dr. Ashfaq Ahmad Khan v. Deputy Commissioner of Income Tax, Peshawar and others (2012 PTD 1329) and Messrs Amina Z. Beauty Salon through Managing Member v. Federation of Pakistan through Secretary General and 3 others (2016 PTD 654)

12. The issue regarding non-issuance of notice under Section 16(4) *ibid* to legal heirs of assessee came up for hearing before a learned Division Bench of this Court in Commissioner Income Tax v. Mst. Kundan Bibi (2007 PTD 1667), whereby it was held that legal heirs were entitled to be issued said notice so as to enable them to file proper representation and declared the assessment against legal heirs of deceased assessee to be of no legal effect. The operative part of the observations is reproduced hereunder:-

5.... It is established that the Assessing Officer instead of issuing notices to all the legal heirs had issued the notice in the name of deceased lady assessee, namely, Mst. Kundan Bibi. As notice under section 16(4), which requires a person to file return, is a basic notice on which the whole structure of assessment is based, therefore, its strict compliance is imperative and the said provision of law is to be strictly construed. The learned Income Tax Appellate Tribunal has rightly held that the notices had not been issued in the names of the legal heirs of the deceased assessee and declared the assessments standing in the names of the legal heirs to be of no legal effect being not maintainable. In the fact the Department issued notices against a dead person and the same cannot be held valid for the assessment made against the legal heirs. The legal heirs are entitled to be issued notices of assessment in their names so as to enable them to file proper representation.

13. Needless to say that when a Statute provides an act to be done in a particular manner or form, it must be performed in such manner alone as nobody should try to be wiser than law, otherwise the same would be termed as illegal and the proceedings unsustainable. Reference can be made to Zia ur Rehman v. Syed Ahmed Hussain and others (2014 SCMR 1015), The Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia



Mohammad Din and Sons and others (2017 SCMR 1427), Shahdost Dashti v. Federation of Pakistan through Secretary Ministry of Inter-Provincial Coordination Government of Pakistan, through Secretary, Pakistan Secretariat, Islamabad and 5 others (2019 CLC 1750), Muhammad Hanif v. Revisional Authority and others (2020 CLC Note 36), Muhammad Ameer v. The State and another (2020 MLD 876) and Muhammad Sajid v. Judge Family Court and others (2020 CLC 1524).

14. In view of the above, our answer to the proposed question is in **affirmative** i.e. in favour of respondent-assessee and against the applicant-department.

This Reference Application, along with connected Reference Applications, is **decided** against applicant-department.

15. Office shall send a copy of this judgment under seal of the Court to learned Appellate Tribunal as per Section 27(5) of the Act of 1963.

(Abid Hussain Chattha)  
Judge

(Muhammad Sajid Mehmood Sethi)  
Judge

**APPROVED FOR REPORTING**

Judge

Judge