APPELATE TRIBUNAL INLAND REVENUE,
LAHORE BENCH, LAHORE.

ITA No. 825/MB/2022
(Tax Year 2015)

Ch. Muhammad Rasheed, Multan. .....Appellant

Versus

The CIR, RTO, Multan. .....Respondent

Appellant by: Mr. Shabbir Fakhar-ud-Din, ITP.
Respondent by: Mr. Muhammad Qaswar Hussain, DR.

Date of hearing: **23-11-2022** Date of order: **29-11-2022**

ORDER

CH. MUHAMMAD AZAM (Judicial Member): The instant appeal has been preferred by the appellant/taxpayer against order dated 27.09.2022 passed by the learned CIR(A-I), Multan for the tax year 2015. The appellant / taxpayer assailed the order of the learned CIR(A) on the following grounds:

i. That the respondent No.1 was not justified to ignore that the impugned order dated 26.06.2021 in respect of tax year 2015 passed by the respondent No.3 under section 121 of the Income Tax Ordinance, 2001 is hopelessly barred by time.

ii. That the respondent No.1 was not justified to confirm the order of the respondent No.3 on technical grounds without appreciating the fact that no notice was served upon the appellant and notice was issued only online which is not a proper service as envisaged u/s 218 of the Income Tax Ordinance, 2001.

iii. That the appellant has been condemned unheard which means maxim audi alterm partem is squarely applicable to the merits of the instant case which literally means that no man shall be condemned unheard. It is a settled principle of law pronounced by the superior courts that the adjudicating officers are obliged to follow the principles of natural justice including reasonable opportunity of hearing. Hence, the entire proceedings are unlawful and liable to be struck down on this ground alone. Reliance is placed on the judgment of Supreme Court of Pakistan 2016 SCMR 1961. Reliance is further placed on the judgment reported as 2014 PTD Trib. 1899, 2016 PLD 667 (HC) and 2016 PTD 589 (H.C).

iv. That the respondent has passed the impugned order by wrongly treating the appellant as Khad dealer whereas the appellant was working as Govt. Contractor during the tax year 2015. The business name (Khad Dealer) adopted by the respondent is purely hypothetical resulting in the erroneous assessment.

v. That the respondent was not justified to create a fictitious tax demand on assumption and hypothesis by treating the inflow of the year amounting Rs.22,883,124/- as income without ignoring the fact that case fall under final Tax Regime and withholding tax has duly been deducted at the time of payment.

2. Briefly stated, the relevant facts for disposal of present appeal are that the taxpayer is an individual. The case of the taxpayer was selected for audit under section 214C of the Income Tax Ordinance, 2001 by the Board through computer ballot. The concerned Commissioner Inland Revenue issued intimation regarding selection of case for audit under section 177 of the Ordinance. Thereafter, the assessing officer issued statutory notices and requisitioned books of accounts and other record. Allegedly, no response was made by the taxpayer to the statutory notices issued by the assessing officer. Accordingly, the assessing authority issued show cause notice u/s 121(1)(d) but he failed to submit requisite information/record. Consequently, the assessing officer passed a best judgment order and amended deemed assessment u/s 121(1)(d)/ 177(10) and made certain additions in the following manner:

Taxable income declared	Rs.0/-
Income assessed	Rs.22,883,124/-
Tax on assessed income	Rs.7,321,593/-
Tax payable/recoverable	Rs.7,321,593/-

Being aggrieved, the taxpayer went in appeal before the learned CIR(A) and assailed the action of the assessing authority as contrary to law and facts of the case. The learned CIR(A) vide impugned appellate order confirmed the assessment order passed by the assessing authority. Being aggrieved, the appellant filed appeal before this Tribunal.

3. The learned AR of the appellant contended that the appellant was not served upon the notices in any manner except through IRIS. It is argued by the learned counsel for the appellant that services has not yet developed in IT on the level that taxpayer himself checks IRIS. It is not facility for everybody especially who are residing/working at the far flange areas where internet service is not available. Respondent has not bothered to adopt any other mode of service. The learned AR relied upon the judgment reported as **2017 PTD 1839**, relevant extract is as under:-

> ***5". It may be further observed that in view of Article 10A of the Constitution and Section 24-A of the General Clauses Act, every public functionary, including the Taxation Authorities, are required to provide fair opportunity of being heard to any person before taking an adverse action against him or passing any order of assessment or creating any additional liability of tax, by confronting such person with the proposed action in writing. The fair trial and right of hearing is regarded as a cardinal principle of Natural justice which has to be read into every Statute even if it may not be specifically provided therein."***

4. Rule 10, 10A and 20 of Order 5 CPC 1908 guides of forms including income tax department to make service on the respondent through notice. There should be some evidence that respondent/taxpayer had received the notice. Substitute service is also acceptable subject to availability of communication of notice to person summoned. Even electronic device of communication mode include Telegram, Phone, telex, fax, radio and television or urgent mail of service and publication in press. For the sake of convenience the same is reproduced as udner:-

> **"10.Mode of service-** Service of the summons shall be made by delivering or tendering a copy thereof signed by the judge or such officer, as he appoints in this behalf, and sealed with the seal of the Court.
> **10-A.- Service by post-** (1) Simultaneously with the issue of summons under rule 9, there shall be sent, unless otherwise ordered by the Court, to the defendant, by registered post, acknowledgement due, and another copy of the summons signed and sealed

in the manner provided in rule 10 by courier service, or as the court may determine, by urgent mail service of Pakistan Post, at the cost of the Plaintiff.
(2) The acknowledgment, purported to be signed by the defendant, of the receipt of the registered communication or an endorsement by a courier messenger or postal employee that the defendant refused to take delivery of the summons shall be deemed by the Court issuing the summons to be prima facie proof of service of summons.

It is argued that when basic act is without lawful authority then superstructure shall have to fall on the ground automatically. Time was to run from the date of knowing about decision of ACIR.

5. It is argued by the learned DR that the learned CIR(A) has passed the order based on real facts after hearing the appellant at length. The appellant intentionally did not appear before the assessing officer after knowing the pendency of the matter with the department through IRIS. It is further stated that law helps vigilant and not indolent.

6. We have heard both the parties and perused the relevant record available before us. we are of the following opinion:

7. Admittedly the department did not adopt any mode of service except IRIS. We are convinced that internet has not yet developed perfectly in our country and this facility is not for everybody. In large area of the country internet service is not available. Moreover members of our society are not knowing use to such methods. They don't know use of internet for such purposes. So service through IRIS is not considered suffice. In our view the officer of Inland Revenue was required to be more conscious about the service of appellant. He should have adopted any other mode of service mentioned above. Justice cannot be done without hearing both the parties. In the case in hand the appellant has not been given opportunity to defend the contention of assessing officer as referred in citation quoted in Para No.3 above. Our Constitution provide the principle of providing fair opportunity of being heard to any person before taking the action

against him or pass any order of assessment or creating additional liability of tax by confronting with such person proposed action in writing. The fact of service only through IRIS is not denied by learned DR. It is admittedly fact that no primary mode of service was adopted. In this way there is violation of mandatory provision for service of notice. Question of limitation does not arise in absence of any confirmed service of the appellant. It is observed that the learned CIR(A) passed the impugned order dated 27.09.2022 on technical grounds of time barred which is not applicable in this situation. We are of the opinion that the matter needs further scrutiny and examination of relevant record. Therefore, the orders impugned (CIR(A) & ACIR) before us are vacated being illegal and against procedure and the case is remanded back for denovo consideration of the assessing officer. He is directed to pass speaking order after giving proper opportunity of hearing to the appellant. The appellant is also directed to cooperate with the department and produce the relevant record before the assessing officer.

8. File be consigned to the record room after issuance of copies of this order to all concerned persons.

9. It is certified that order in hand consists of five (05) pages. Every page has been signed by us.

Sd/-

(CH. MUHAMMAD AZAM)
Judicial Member

Sd/-

(DR. MUHAMMAD NAEEM)
ACCOUNTANT MEMBER

Copy of the bench order forwarded to
1. The Appellant Ch Muhammad Rashid Multan
2. The Respondent

BY ORDER

ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan 14/12/2022