

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE QAZI FAEZ ISA, CJ**  
**MR. JUSTICE AMIN-UD-DIN KHAN**  
**MR. JUSTICE ATHAR MINALLAH**

**CIVIL PETITION No.2732-L OF 2016**

*(Against the order dated 09.06.2016  
passed by Lahore High Court, Multan  
Bench, Multan in TR No.26 of 2013)*

**Commissioner Inland Revenue Multan**  
**Versus**

....Petitioner

**Sh. Muhammad Amin Arshad**

....Respondent

For the petitioner:

Ch. Zafar Iqbal, ASC with Mr. Rab Nawaz,  
Assistant Commissioner.  
*(via video link from Lahore)*

For the respondent:

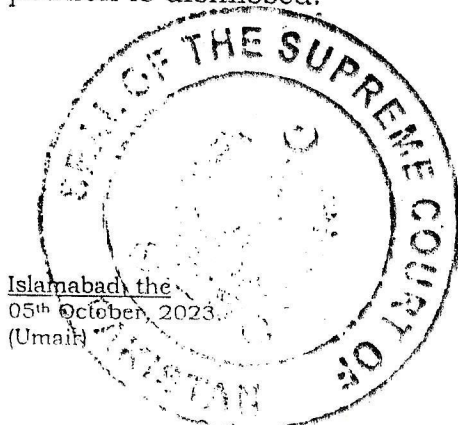
Sh. Zafar-ul-Islam, ASC assisted by Mr. Tanveer  
Ahmed, Advocate.

Date of Hearing:

05.10.2023

**ORDER**

**Qazi Faez Isa, CJ.** This civil petition for leave to appeal challenges the order dated 9 June 2016 passed by a Division Bench of the Multan Bench of the Lahore High Court, which had upheld judgment dated 16 May 2013 of the Appellate Tribunal Inland Revenue (**the Tribunal**). On page 7 of the Tribunal's judgment the reason for allowing the appeal is given, which was the non-provision of the information that was being relied upon by the department. Therefore, we inquired from the learned counsel whether the requisite information was provided to the respondent and the learned counsel could not refer to anything to show that it was. Under the circumstances the learned Judges of the High Court upholding the judgment of the Tribunal cannot be faulted, who had also observed that there was no question of law in the reference requiring a decision. No illegality either in the order of the High Court or in the judgment of the Tribunal has been pointed out to justify the grant of leave, which is accordingly declined and consequently this petition is dismissed.



**Sd/-HCJ**

**Sd/-J**

**Sd/-J**

Certified to be True Copy

**Senior/Court Associate**  
Supreme Court of Pakistan  
Islamabad

Islamabad, the  
05th October, 2023.  
(Umail)

← 12/3/22  
12/1/22

IN THE SUPREME COURT OF PAKISTAN  
(Review Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa  
Mr. Justice Yahya Afridi  
Mr. Justice Jamai Khan Mandokhail

Civil Review Petition No. 17 of 2021

[For review of the order dated 07.01.2021 passed by this Court]

In

Civil Petition No. 2732-L of 2016

*Sh. Muhammad Amin Arshad.* ... *Petitioner*

Versus

*Commissioner Inland Revenue, RTO, Multan.* ... *Respondent*

For the Petitioner:                      Sh. Zafar-ul-Islam, ASC.  
Assisted by Tahir Ahmed, Advocate.  
Syed Rifaqat Hussain Shah, AOR.

For the Respondents:                      Ch. Zafar Iqbal, ASC.  
(Through video-link from Lahore)  
Mr. Qaswar Hussain,  
Addl. Commissioner, RTO, Multan.

Date of Hearing:                              27.10.2022.

ORDER

Qazi Faez Isa, J. The learned counsel for the review petitioner submits that Civil Petition No. 2732-L of 2016 filed by the Commissioner Inland Revenue had impugned an order of a Bench comprising two learned Judges of the Lahore High Court, Multan Bench, which was set aside the two learned Judges of this Court through order dated 7 January 2021, the review whereof has been sought herein.

2. It is submitted that the Order XI of the Supreme Court Rules, 1980 requires that if an order is to be set aside it should have been by a minimum of three-member Bench of this Court and that this is also the settled practice of this Court. The learned Ch. Zafar Iqbal (through video-link from Lahore) stated that he cannot dispute the contention of the learned counsel for the review petitioner, but states that then the main case should be heard by a three-member Bench of this Court afresh. Therefore,

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

17/11/22

this review petition is allowed, and the order dated 7 January 2021 passed by this Court is recalled. Consequently, the office is directed to fix Civil Petition No. 2732-L of 2016 before a three-member Bench of this Court.

Sd/-J

Sd/-J

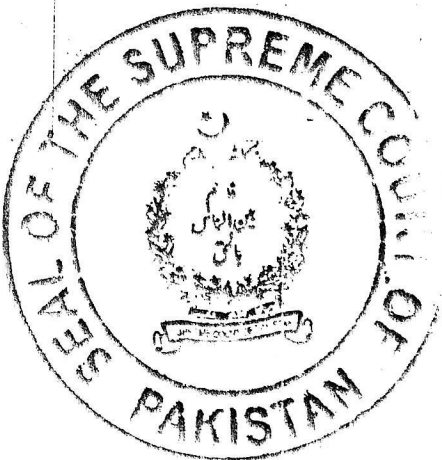
Sd/-J

**Certified to be True Copy**

Islamabad:  
27.10.2022  
(M. Tauseef)

*Handwritten notes and stamps:*  
27/10/22  
27/10/22

*Signature*  
**Senior Court Associate  
Supreme Court of Pakistan  
Islamabad**



GR No:	<u>20909/2022</u>	Civil/Criminal
Date of Presentation:	<u>16-11-2022</u>	
No of Words:	<u>600</u>	
No of Folios:	<u>6</u>	
Requisition Fee Rs.:	<u>5.00</u>	
Copy Fee Rs.:	<u>3.72</u>	
Court Fee Rs.:	<u>0.72</u>	
Date of Completion of Copy:	<u>17/11/22</u>	
Date of Delivery of Copy:	<u>17/11/22</u>	
Compared by:	<u>[Signature]</u>	
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**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Maqbool Baqar  
Mr. Justice Qazi Muhammad Amin Ahmed

**Civil Petition No.2732-L of 2016**

*(Against the judgment dated 9.6.2016 passed by the Lahore High Court Multan Bench Multan in T.R. No.26/2013)*

***Commissioner Inland Revenue Multan***

*...Petitioner(s)*

**Versus**

***Sh. Muhammad Amin Arshad***

*...Respondent(s)*

For the Petitioner(s): Ch. Muhammad Shakil, ASC

For the Respondent(s): Sheikh Zafar-ul-Islam, ASC

Date of hearing: 07.01.2021.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** The respondent, a Commission Agent/Broker, declared an income of Rs.34,42,374/- on account of supplies to M/s Shujabad Oil Mills Pvt. Ltd; he assessed his income tax as Rs.3,42,437/-. The Deputy Commissioner Inland Revenue, however, detected receipt of payments through bank cheques far beyond the declared amount, running to the tune of Rs.56,12,36,365/- to set in motion through notice dated 24.9.2012, proceedings under sections 122(5)(9) and 111(1) of the Income Tax Ordinance, 2001 (*hereinafter referred to as "the Ordinance"*), considering the detection as definite information and pursuant to a show cause notice determined tax liability vide order dated 18.2.2013 as under:

<i>Income determined u/s 39</i>	<i>Rs.56,12,36,365/-</i>
<i>Income Tax Payable @ 25 %</i>	<i>Rs.14,03,09,091/-</i>
<i>Income Tax Deducted as FTR as per Block A</i>	<i>Rs.3,42,437/-</i>

Appeal filed by the respondent before the Commissioner Inland Revenue (Appeals) Multan met with no better fate vide order dated 18.3.2013, however, reversed by the Appellate Tribunal Inland Revenue Lahore Bench Multan (Camp at Multan) vide order dated 16.05.2013, assailed by the Department through Tax Reference No.26 of 2013. The High Court declined to answer the reference in affirmative, vide impugned order dated 9.6.2016, on the ground that in the absence of "*any definite information*" that too without confrontation to the assessee involving a factual controversy, the Department could not invoke the advisory jurisdiction.

2. Learned counsel for the petitioner contends that the learned High Court failed to consider facts of the case in their contextual backdrop that unambiguously constituted "*definite information*" within the contemplation of section 122(5) of the Ordinance, duly confirmed by documented transactions through banking channel, additionally verified by no other than the recipient i.e. M/s Shujabad Oil Mills Pvt. Ltd. The impugned order being slipshod calls for interference, concluded the learned counsel. Learned counsel for the respondent has, however, defended the view taken by the Appellate Tribunal Inland Revenue, by maintaining that refusal by the High Court to decline interference being well within the remit of law did not admit space for a probe into factual controversy.

3. Heard. Record perused.

4. Definite information within the contemplation of section 122(5) of the Ordinance contemplates an assessment in respect of a relevant tax year by the Commissioner, upon satisfaction of the conditions:

- i. any income chargeable to tax has escaped assessment; or*
- ii. total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or*
- iii. any amount under a head of income has been misclassified.*

Position taken by the department has a substance inasmuch as the respondent did not deny payments, the modes thereof and product wise quantum of the purchases. Learned counsel for the respondent failed to substantiate his contention qua business activities with M/s Shujabaad Oil Mills Private Limited in the light of banking transactions. The

department has rightly determined the income of the respondent under section 39 of the Ordinance along with income tax chargeable and penalty consequent thereupon under section 182(2) thereof. The learned High Court failed to appreciate the law on the subject and passed the impugned order in a slipshod manner; the same, therefore, cannot sustain; the orders passed by the Commissioner Inland Revenue (Appeals) and the Deputy Commissioner Inland Revenue being well within the remit of law are restored. Petition is converted into appeal and same is allowed.

**Judge**

**Judge**

Islamabad, the  
7<sup>th</sup> January, 2021  
Not approved for reporting  
*Ghulam Raza/-*