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<u>JUDGMENT SHEET</u>
IN THE LAHORE HIGH COURT, RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Income Tax Reference No.05 of 2018

Commissioner Inland Revenue **V/S** *Syed Muhammad Murtaza Zaidi etc.*

<u>JUDGMENT</u>

Date of hearing	24.03.2026
Applicant (s) by	Syed Muhammad Abbas, Advocate with Yousaf Khan, S.O. IR (Hqrs), RTO, Rawalpindi.
Respondent(s) by	*Ex parte.*

<u>JAWAD HASSAN, J.</u> This reference application as well as reference application No.06 of 2018 in terms of Section 133 of the Income Tax Ordinance, 2001 (hereinafter referred to as ***"Ordinance"***) has arisen out of same order dated 12.01.2018 whereby the Chairman, Appellate Tribunal Inland Revenue, acting as referee member, (hereinafter referred to as "***Chairman ATIR***") proceeded to decide applications regarding difference of opinion between the Members of Division Bench through order dated 28.12.2016 in M.A.(Rect.)No.72/IB/2016 and M.A.(Rect.)No.73/IB/2016 in ITA No.638 and 639/IB/2015 for the Tax Years 2013 and 2014. These reference applications are being dealt with and decided together as common question of law arises for an opinion of this Court.

2. Brief facts of the case are that the taxpayer, M/s Supply Pro, an individual, (hereinafter referred to as "***respondent***") derives income from the sale of sugar to the CMA (DP). For the tax year 2013, the "***respondent***" filed a return declaring taxable

income of Rs. 3,022,724/-. During scrutiny proceedings, it was observed that withholding tax under Section 153 of the "***Ordinance***" had not been deducted on payments made to the "***respondent***". Consequently, a show cause notice dated 01.09.2014 was issued, which was duly responded to; however, the reply was found unsatisfactory. Subsequently, another show cause notice was issued for amendment of assessment under Section 122 read with Sections 122(5), 111(1)(d)(ii), and 111(1)(b) of the "***Ordinance***". The reply submitted thereto was also not found satisfactory. Resultantly, the Assessing Officer amended the assessment under Section 122 of the "***Ordinance***" on 02.03.2015 by making additions on account of unexplained income and non-compliance of withholding tax provisions. Being aggrieved, the "***respondent***" filed an appeal before the Commissioner Inland Revenue (Appeals-III), Rawalpindi, which was dismissed vide order dated 25.05.2015. Being dissatisfied from the above said order, the "***respondent***" preferred appeal before the Appellate Tribunal Inland Revenue, Islamabad Bench, Islamabad, which was also dismissed vide order dated 14.04.2016. Thereafter, the "***respondent***" filed rectification applications before the Appellate Tribunal Inland Revenue (Division Bench-I), Islamabad. One learned Member allowed the rectification application while the other recorded a dissenting note. Consequently, due to the difference of opinion, the matter was referred to the Chairman, Appellate Tribunal Inland Revenue, being a Referee Member, who passed the impugned order dated 28.12.2016.

3. Learned counsel for the applicant-department *inter alia* argued that the "***Chairman ATIR***" has grossly exceeded its lawful jurisdiction while deciding the rectification applications under Section 221 of the "***Ordinance***"; that the scope of Section 221 of the "***Ordinance***" is strictly limited to the rectification of mistakes

apparent on the face of the record and does not extend to review, reappraisal of evidence, or re-adjudication of the matter; that the "***Chairman ATIR***" entertained fresh evidence and allowed detailed lengthy arguments, which clearly fall outside the ambit of rectification proceedings under Section 221 of the "***Ordinance***" and this course amounts to a review of its earlier order dated 14.06.2016.

4. Notices were issued to the "***respondent***" however, he did not turn up despite publication, he was thus proceeded against *ex parte* vide order dated 25.02.2026.

5. We have heard the learned counsel for the applicant department and have examined the record. The controversy in the present reference application revolves around the scope and extent of powers vested in the Appellate Tribunal Inland Revenue under Section 221(1) of the "***Ordinance***". For ready reference and convenience, the same is reproduced below:-

> *"**221. Rectification of mistake.-** (1) The Commissioner, the Commissioner (Appeals) or the Appellate Tribunal may, by an order in writing, amend any order passed by him to rectify any mistake apparent from the record on its own motion or any mistake brought to its notice by a taxpayer or, in the case of the Commissioner (Appeals) or the Appellate Tribunal, the Commissioner.*
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The above provision of law clearly vests the power of rectification with the Commissioner Inland Revenue, the Commissioner (Appeals) and the Appellate Tribunal Inland Revenue, allowing each of these authorities to amend their own orders strictly within the limits defined under the section. This power is confined to rectify a "mistake apparent from the record," which refers to errors that are obvious, patent and self-evident,

requiring no elaborative argument or re-examination of evidence. Such mistakes typically include clerical errors such as typographical mistakes in dates or figures, arithmetical errors, including miscalculation of tax liability and misapplication of a clear statutory provision. Rectification is effected through a written order specifying the nature of mistake and the correction made therein. The process of rectification, under the section *ibid* may be initiated either by the authority on its own motion upon noticing the mistake or by a taxpayer bringing such error to the notice of the Commissioner, the Commissioner (Appeals), or the Appellate Tribunal, as the case may be. However, the power to rectify is limited, specific and does not permit review of earlier orders, reappraisal of evidence, re-adjudication of concluded matters.

6. It is an admitted position that the "***respondent***" filed rectification applications before the Appellate Tribunal Inland Revenue (Division Bench-I), Islamabad and the same was heard by two Members of the Appellate Tribunal. One Member allowed the rectification application while the other recorded a dissenting note, holding that the scope of rectification under Section 221 of the **"*Ordinance*"** does not extend to review or re-adjudication of concluded matters. Owing to this difference of opinion, the matter was then referred to the "***Chairman ATIR***" who while concurring with the view of one Member, proceeded to pass the impugned order dated 28.12.2016. Pertinently, the "***Chairman ATIR***" and the Appellate Tribunal while deciding the rectification applications entertained fresh evidence and allowed lengthy and detailed arguments, which clearly fall outside the narrow scope of Section 221 of the "***Ordinance***". By doing so, the "***Chairman ATIR***" and Appellate Tribunal effectively re-adjudicated the matter and reviewed earlier order dated 14.04.2016 passed by the same Appellate Tribunal, which is not permissible under the

statutory framework. The powers under Section 221 of the "***Ordinance***" do not authorize reassessment of facts, admission of new material or reconsideration of merits; rather they are limited to correcting apparent errors on the face of the record. Similar situation was dealt with by the Supreme Court of Pakistan in the case of *"M/s Chaudhary Steel Furnace versus Commissioner Inland Revenue, Sialkot Zone, Regional Tax Office, Sialkot"* decided in Civil Petition No.312 of 2025 on 22.05.2025. In the said case, the Petitioner challenged the Lahore High Court's order which had accepted the department's reference against the Tribunal's rectification order. The Tribunal had earlier disposed of the appeal in 2013, but later entertained a rectification/fixation application in 2018, modifying its earlier order in favour of the petitioner. The High Court held that the Tribunal had exceeded its jurisdiction under Section 57 of the Sales Tax Act, 1990, because rectification is confined to mistakes apparent from the record and cannot be used to reopen or re-adjudicate concluded matters. The Supreme Court agreed, finding that the Tribunal acted as an appellate forum of its own order and held that *"indeed a rectification of mistake could be amended/rectified by an order passed by the Tribunal which mistake is apparent on the face of the record, however, it does not enlarge the scope of the Tribunal to render a complete and altogether different decision, independent of earlier "view" as expressed"*. Furthermore, this Court in the case of *"COMMISSIONER INLAND REVENUE, SIALKOT versus M/s CHAUDHRY STEEL MILLS, S.I.E., DASKA"* **(2025 PTD 101)** while dealing with scope of Section 221 of the "***Ordinance***", observed that "*Section 221 of the Ordinance relates to the rectification of mistakes which are apparent from the face of record. The words used in the said provision are very specific and purposeful "any order passed by him" and does not include an order which is deemed to have*

been issued by the Commissioner by fiction of law which is the case for assessment orders under section 120 of the Ordinance. The words "an assessment order treated as issued under section 120" used in section 122(1) of the Ordinance are clearly distinguishable from the words used in section 221 of the Ordinance which says "any order passed by him". The act of passing of formal order by any Officer of Inland Revenue presupposes an application of mind and in most cases adjudication on merits after hearing the parties. Thus, there is a marked distinction between the deemed order and the order passed by the authority after fully applying his mind and giving proper opportunity of being heard to the person. Thus, rectification is permissible only to "amend any order passed by him" and not the order treated to have been issued under section 120 of the Ordinance because the deemed order did not amount to an order passed by the authority. Had it been the intention of the legislature, it become necessary to introduce the specific provisions or amendment with certain words to cater the eventuality of deemed order in section 221 that a deemed order under section 120 can be amended in case of a mistake apparent from record. The expression "subject to this section" used in subsection (1) of section 122 ibid further restrict that the deemed order treated to have been issued under section 120 can only be amended under the said section".

7. It is observed that the "***respondent***", being aggrieved of the order dated 14.04.2016 passed by the Appellate Tribunal Inland Revenue, Islamabad Bench, ought to have challenged the same before the High Court by way of a reference application under Section 133 of the **"*Ordinance*"** which was the proper and lawful course available to the "***respondent***" but he opted to file rectification applications before the same forum and such approach was misconceived. By invoking rectification instead of a

statutory provision, the "***respondent***" attempted to bypass the proper appellate mechanism, which is impermissible in law.

8. In view of above legal position, these reference applications are allowed and impugned order is *set aside* and question of law raised therein is answered accordingly.

9. Office shall send a copy of this order under seal of the Court to the concerned quarter as per Section 133(8) of the *"**Ordinance**"*.

(MIRZA VIQAS RAUF)
JUDGE

(JAWAD HASSAN)
JUDGE

*Usman**