

JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT

W.P No.13284 of 2012

M/s Ibrahim Fibers Limited

Versus

Federation of Pakistan & others

J U D G M E N T

Date of Hearing.	19-09-2017
PETITIONER BY:	Mr. Khurram Shahbaz Butt, Advocate.
RESPONDENTS BY:	Mr. Sarfraz Ahmad Cheema, Advocate for respondents with Dr. Ishtiaq Ahmad Khan, Director Law, FBR.

Shahid Karim, J:- This petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has the following prayer:-

*"In view of the circumstances narrated above, it is humbly prayed that graciously allowing the present petition:*

- A. *The impugned notice issued by the Respondent No.4 may graciously be declared unlawful, void abinitio and without jurisdiction, and of no legal consequence.*
- B. *The Respondent No.4 may graciously be restrained from taking any action against the petitioner on the basis of the impugned notice during the pendency of the present petition.*
- C. *Any other relief, which is warranted from the facts and circumstances of the case may also be allowed to the petitioner."*

2. The impugned notice is dated 18.5.2012 and is purported to be a notice under Section 221 of the Income Tax Ordinance, 2001 ("the Ordinance") for the tax year 2010. Through the said notice, an explanation regarding certain matters forming the contents of the impugned notice has been required from the petitioner.

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The facts are not in dispute and are refreshingly simple. The petitioner filed its complete return of total income with the respondent No.3 in respect of tax year 2010. The return was accompanied by audited accounts along with a chart as required for computation of taxable income. In terms of section 129(1) of the Ordinance, the return filed by the petitioner was treated as an assessment made by the respondent No.3. However, subsequently the impugned notice has been issued under Section 221 of the Ordinance, which reads as follows:-

"221. Rectification of mistakes. — (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 his or its own motion or any mistake brought to his or its notice by a taxpayer or, in the case of the Commissioner (Appeals) or the Appellate Tribunal, the Commissioner.

(1A) The Commissioner may, by an order in writing, amend any order passed under the repealed Ordinance by the Deputy Commissioner, or an Income Tax Panel, as defined in section 2 of the repealed Ordinance to rectify any mistake apparent from the record on his own motion or any mistake brought to his notice by a taxpayer and the provisions of sub-section (2), sub-section (3) and sub-section (4) shall apply in like manner as these apply to an order under sub-section (1).

(2) No order under sub-section (1) which has the effect of increasing an assessment, reducing a refund or otherwise applying adversely to the taxpayer shall be made unless the taxpayer has been given a reasonable opportunity of being heard.

(3) Where a mistake apparent on the record is brought to the notice of the Commissioner or Commissioner (Appeals), as the case may be, and no order has been made under sub-section (1) before the expiration of the financial year next following the date on which the mistake was brought to their notice, the mistake shall be treated as rectified and all the provisions of this Ordinance shall have effect accordingly.

(4) No order under sub-section (1) may be made after five years from the date of the order sought to be rectified.

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& the Hon'ble Commissioner (Appeals)

3. Two issues have been raised in this petition to lay a challenge to the impugned notice on the basis of which the petitioner seeks the indulgence of this Court to hold the notice to be void and unlawful:

- *Whether in the facts and circumstances of the case the officer issuing the notice was justified to invoke section 221 of the Ordinance in respect of a deeming order?*
- *Whether the provisions of section 221 of the Ordinance only apply when an officer has passed an order?*

4. The scheme of the filing of tax returns is not in doubt. Section 120 mandates that where a taxpayer has furnished a complete return of income, the Commissioner shall be taken to have made an assessment of taxable income for that tax year and the return shall be taken for all purposes of the Ordinance to be an assessment order. It follows from section 120 that, in fact, the Commissioner does not pass a formal order and there is no application of mind on the part of the Commissioner and by an act of fiction, the return filed by the taxpayer is deemed to be an assessment order for all intents and purposes to have been issued by the Commissioner. In case, the Commissioner deems fit for any reasons permissible under the law, an amendment of assessment may be made by the Commissioner under Section 122 of the Ordinance by making such alterations or additions as the Commissioner considers necessary. This is the first time that the Commissioner passes an

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order seeking to alter or add to the deemed assessment filed by the taxpayer. The only question that arises for determination of this petition is whether the Commissioner can proceed in terms of section 221 for rectification of a purported mistake of an order which has not been passed by the Commissioner, in fact, is deemed to be an assessment order issued by the Commissioner.

5. Upon a reading of section 221 of the Ordinance and juxtaposing it with sections 120 and 122, it becomes clear that the powers under these provisions are not overlapping and are clearly intended to operate within their respective spheres. Section 221 relates to rectification of mistakes and the crucial words upon which the construction of this provision hinges are "any order passed by him". This clearly 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. To reiterate, the return filed by the taxpayer shall be taken to be an assessment order issued to the taxpayer by the Commissioner. The words used in clause 'b' of subsection (1) of section 120 are "assessment order issued to the taxpayer by the Commissioner." The words are clearly distinguishable from the words used in section 221 to which a reference has been made above and which are to the effect "any order passed by him". The act of passing an order by an officer presupposes an

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application of mind and in most cases an adjudication on merits after hearing the parties. Also as the title of section 221 connotes, the subject matter of the provision relates to rectification of mistakes in any order passed by the Commissioner and this power therefore has to be contrasted with the powers conferred under Section 122 of the Ordinance. The provisions of the Ordinance contemplate various stages at which the authorities of income tax are required to pass an order. By way of illustration, a reference may be made to sections 122, 122(2), 152(5A) and 182. Also the intention of the legislature upon a reading of section 221 seems to come across very clearly. The assessment order issued under Section 120 which is sought to be rectified now through the impugned notice was clearly not passed by the Commissioner. The respondents do not take cavil to the proposition that such an assessment order is not passed by the Commissioner and is merely deemed to have been issued by him. Therefore, if an order is not passed by the Commissioner, no question of rectification of mistake committed by the Commissioner arises which can only be the case if there is an order passed by an officer and in which a mistake has crept which is sought to be rectified at a later stage. The mistake if at all in the assessment order is that of the taxpayer and not that of the Commissioner and thus, the powers under Section 221 cannot be exercised in respect of an assessment order issued under Section 120 of the Ordinance. If at

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