

APPELLATE TRIBUNAL INLAND REVENUE, DIVISION BENCH-I,
ISLAMABAD

ITA No.1272/IB/2024
(Tax year, 2018)

Mr.Mohammad Saghir,
M/s Alsaleha Pharmacy, Shop
No.03, Block No.26, Mir Plaza, Civic
Centre, Melody, Islamabad.

Applicant

Vs

The Deputy Commissioner Inland
Revenue, RTO, Islamabad.

Respondent

Appellant By:

Mr.Asif Fareed, ITP

Respondent BY:

Ms.Sidra Shafique,DR

Date of Hearing:

10.09.2024

Date of Order:

10.09.2024

ORDER

M. M. AKRAM (Judicial Member): The titled appeal has been filed by the appellant taxpayer as the first appeal under section 131 of the Income Tax Ordinance, 2001 ("**the Ordinance**") against the Impugned Order dated 30.06.2024 passed by the Officer of Inland Revenue, Unit-II, Zone North, Range-I RTO, Islamabad for the tax year 2018 on the grounds as set forth in the memo of appeal.

2. The key facts from the record reveal that the appellant taxpayer's income tax affairs were selected for audit under Section 214C of the Ordinance by the Federal Board of Revenue (**FBR**). An intimation regarding the selection, bearing barcode No. 10000077934302, was issued through IRIS on 28.09.2020, with compliance required by 13.10.2020. Subsequently, a notice dated 07.11.2023 was issued under Section 177(1) of the Ordinance, requesting records, documents, and accounts, with a compliance deadline of 14.11.2023. The taxpayer failed to comply by the due date. A reminder was sent on 25.01.2024, giving the taxpayer until 31.01.2024 to submit the necessary documents. On 13.11.2023, the taxpayer requested an adjournment, which was granted, and a

hearing was scheduled for 27.11.2023. However, the taxpayer remained non-compliant, and no further request for adjournment was received. A show-cause notice under Section 122(9) of the Ordinance was issued through IRIS (barcode No. 100000188099519) on 19.02.2024, asking the taxpayer to explain discrepancies found during a preliminary desk audit, with a compliance date of 05.03.2024. The taxpayer requested a 30-day extension on 05.03.2024, followed by another extension request on 26.03.2024 for an additional 30 days. Both requests were considered, and time was granted. On 01.05.2024, the taxpayer submitted a response along with incomplete records and documentary evidence. After detailed scrutiny of the incomplete submission, **a best judgment assessment order was issued on 30.06.2024** by the Officer of Inland Revenue. Dissatisfied with this order, the appellant has now approached the Tribunal, challenging the impugned order on several grounds.

3. This case came up for hearing on 10.09.2024. At the outset, the appellant's Authorized Representative (**AR**) argued that it is undisputed that the best judgment assessment order under Section 121 of the Ordinance was passed by the assessing officer through the impugned order dated 30.06.2024, after the expiration of the statutory limitation period set out in Section 121(3) of the Ordinance. He explained that the time limit for completing a best judgment assessment was extended from five to six years through the Finance Act, 2022, which applies to the tax year 2022 and onwards. However, since the tax year in question is 2018, the five-year limitation period should be applicable in this case. This legal argument was confronted to the Departmental Representative (DR), who, in response, contended that the amendment related to the procedure, and would thus have a retrospective effect on the case of the Appellant.

4. We have heard the parties and perused the record. It is undisputed that the best judgment order under Section 121 of the Ordinance was issued by the assessing officer on 30.06.2024, pertaining to the tax year 2018. The key point of contention between the parties is the applicability of the amendment made to Section 121(3) of the Ordinance through the Finance Act, 2022, which extended the time limitation from five to six years. The central issue is whether this amendment applies to the appellant's case for the tax year 2018 or not.

5. It is a settled principle of statutory interpretation that the applicability of enactment can best be adjudged from its expressed content and implied intent. When the enactment itself provides for the same to have effect from a particular point in time, the express command of the legislature is to be abided by, interpreted, and applied accordingly. In the present case, the Finance Act, 2022 provides:

**"1. Short title and commencement. — (1) This Act shall be called the Finance Act, 2022.
(2) It shall, unless specified otherwise provided, come into force on the first day of July, 2022."**

Sub-section (2) of section 1 of the Finance Act, 2022, highlighted above, clearly and expressly provides for its provisions to take effect from 1st July 2022. This being so, there can be no cavil to its applicability commencing from 1st July 2022 and not for any period prior thereto.

6. With regards to the contention of the learned DR that the amendment related to the procedure, and would thus have a retrospective effect on the case of the Appellant, we are afraid this line of argument, though attractive, is not applicable to the facts of the present case. Like any other fiscal enactment, the Act provides for three distinct types of provisions. The charging provisions, which relate to the levy or charge of the tax, which usually state that tax is to be levied and on what matters, or goods or income and in which manner and at what rate

and matters relevant thereto. The assessment provisions, deal with the assessment, calculation, or quantification of the tax for the purposes of determining the amount of tax due and payable or which has escaped collection or has been under-assessed or assessed at a lower rate or on which excessive relief or refund has been allowed. The collection provisions relate to the mode and manner of receipt or collection of the tax. The charging sections have to be strictly construed and any benefit found therein has to be given to the taxpayer. However, the assessment and collection provisions are merely the machinery sections and they can be liberally construed. The aforesaid categorization of provisions of fiscal statutes has been very aptly explained in detail by His Lordship Mr. Justice. Rustam S. Sidhwa, in **M/s Friends Sons and Partnership Concern v. The Deputy Collector Central Excise and Sales Tax, Lahore and others** (PLD 1989 Lahore 337).

7. Now, to the crucial issue of the applicability of amendment introduced in fiscal statutes. It was in 1905, when Lord Macnaghten, in **The Colonial Sugar Refining Company v. Irving (1905 AC 369) case**, speaking for the Privy Council, opined that:

"As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question is a matter of procedure only, the petition is well-founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new

tribunal. In either case, there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

The above principle of interpretation of statutes was followed and further developed by the Hon'ble Supreme Court of Pakistan. Some of the leading cases are **Muhammad Ishaq v. State** (PLD 1956 SC 256), **Nagina Silk Mill, Lyallpur v. Income Tax Officer, A-Ward, Lyallpur** (PLD 1963 SC 322), **The State v. Muhammad Jamel (PLD 1965 SC 681)** and **Abdul Rehman v. Settlement Commissioner** (PLD 1966 SC 362). It was the case of **Adnan Afzal v. Capt. Sher Afzal** (PLD 1969 SC 187) that the said principle was articulated by the Hon'ble Supreme Court in terms that:

"Nevertheless, it must be pointed out that if in this case process any existing rights are affected or the giving of retroactive operation cause inconvenience or injustice, then the Courts will not even in the case of a procedural statute, favour an interpretation giving retrospective effect to the statute. On the other hand, if the new procedural statute is of such a character that its retroactive application will tend to promote justice without any consequential embarrassment or detriment to any of the parties concerned, the Courts would favourably incline towards giving effect to such procedural statutes retroactively."

The opinion of the Apex Court, rendered in the above referred cases, has remained un-wavered, as can clearly be seen from decisions that followed, in particular **Ch. Safdar Ali v. Malik Ikram Elahi and another** (1969 SCMR 166), **Muhammad Abdullah v. Imdad Ali** (1972 SCMR 173), **Bashir v. Wazir Ali** (1987 SCMR 978), **Mst. Nighat Yasmin v. National Bank of Pakistan** (PLD 1988 SC 391), **Yusuf Ali Khan v. Hong Kong and Shanghai Banking Corporation, Karachi** (1994 SCMR 1007), **Malik Gul Hasan & Co. and 5 others v. Allied Bank of Pakistan** (1996 SCMR 237) and **Commissioner of Income Tax, Peshawar v. Islamic Investment Bank Ltd.** (2016 SCMR 816). In the more recent case of **Additional Commissioner Inland Revenue,**

Audit Range, Zone-I v. Eden Builders Limited, (2018 SCMR 991), where the question was whether or not the provisions of section 122(2) of the Income Tax Ordinance, 2001, being procedural in nature, would have retrospective effect, and whether pursuant to the amendment brought about in section 122(2) of the Income Tax Ordinance, 2001 through Finance Act, 2009 consequential extension in date of expiry of the limitation period would operate prospectively or otherwise, the Hon'ble Supreme Court held that prospective applicability:

"..... was not permissible as certain rights had already come to vest in the respondents on the date on which they had filed their tax returns under the original section....."

The Hon'ble Supreme Court also went on to reiterate the view taken earlier in the **Nagina Silk Mill** case (supra):

"The Courts must lean against giving a statute retrospective operation on the presumption that the Legislature does not intend what is unjust. It is chiefly where the enactment would prejudicially affect vested rights, the legality of past transactions, or impair existing contracts, that the rule in question prevails ... Even if two interpretations are equally possible, the one that saves vested rights would be adopted in the interest of justice, especially where we are dealing with a taxing statute."

8. Thus, the judgments cited establish a consistent legal principle regarding the retrospective application of statutory amendments, particularly in fiscal law. These rulings underscore that an amendment is generally not applied retroactively unless explicitly stated or necessarily implied. If a statute affects only procedural aspects, it may apply retroactively. However, if it interferes with existing substantive rights (e.g., a right to appeal), the courts typically avoid retrospective application to protect vested rights, prevent injustice, and ensure fairness. In **Colonial Sugar Refining Co. v. Irving**, the Privy Council set a key precedent by holding that procedural changes cannot remove a party's right to appeal in ongoing cases, as doing so would infringe upon an existing right. Following this reasoning, the Supreme Court of Pakistan developed and applied

this principle in numerous cases, including **Adnan Afzal v. Capt. Sher Afzal**, where it stated that even procedural changes would not apply retroactively if they disrupt existing rights or cause injustice. For instance, in **Eden Builders Limited**, the Court ruled against the retroactive application of a procedural amendment to tax law, which would have impacted the vested rights of taxpayers who had already filed under the original terms.

In sum, these judgments articulate a strong presumption against retroactive application, especially in fiscal law, unless retroactivity promotes justice without adversely affecting the parties' rights. This principle promotes legal certainty and respects taxpayer rights, ensuring that statutory amendments in tax law are applied prospectively unless a clear intention to the contrary is evident.

9. In light of the above discussion and relevant judgments, the extension of the limitation period from five to six years under Section 121(3) of the Ordinance applies only from the tax year 2022 onward, as this amendment would have affected the vested rights of taxpayers who had already filed under the previous terms. Therefore, the best judgment assessment under Section 121 should have been issued within five years following the end of the relevant tax or income year, which expired on 30.06.2023. Consequently, the impugned order dated 30.06.2024 is declared void *ab initio*, illegal, and without jurisdiction, and is hereby annulled.

Sd/-
(IMRAN LATIF MINHAS)
ACCOUNTANT MEMBER

Sd/-
(M. M. AKRAM)
JUDICIAL MEMBER