IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. D-2456 of 2021
[OBS Pakistan (Pvt.) Limited v. Federation of Pakistan & others]

Before:
MR. JUSTICE YOUSUF ALI SAYEED
MR. JUSTICE MUHAMMAD OSMAN ALI HADI

Petitioner:	OBS Pakistan (Pvt.) Limited (Formerly Known as Luna Pakistan (Pvt) Ltd) through Mr. Ovais Ali Shah, Advocate.
Respondents:	Through Mr. Faheem Raza, Advocate.
Fed. of Pakistan:	Through Mr. Muhammad Akbar Khan, A.A.G.
Dates of Hearing:	30.03.2026 & 14.04.2026
Date of Judgement:	09.07.2026

JUDGMENT

***MUHAMMAD OSMAN ALI HADI, J*: -** The Petitioner has filed the instant Petition challenging an order passed by Respondent No. 3 dated 19.02.2021 (**"Impugned Order"**), vide which the Petitioner's Revision Application seeking filing of their audited accounts was declined.[1]

2. The main contention put forth on behalf of the Petitioner is that the Petitioner filed their income tax returns for the tax year 2019 on 22.08.2020, while furnishing *'unaudited'* accounts. Counsel for the Petitioner asserts the legal requirement is to file *'audited'* accounts along with tax returns, as prescribed under Rule 34 of the Income Tax Rules, 2002 (**"ITR 2002"**).

3. After filing of the income tax returns, the Petitioner received a Show Cause Notice dated 15.12.2020 (**"SCN"**) under section 122(9) of the Income Tax Ordinance 2001 (**"ITO 2001"**), issued by the Respondents, for

[1] At pg. 191

amendment of assessment.[2] Subsequent to the SCN, a Notice under section 111 ITO 2001 dated 12.01.2021 (**"the 111 Notice"**) was issued to the

Petitioner by the Respondents,[3] which required certain explanations / documentation from the Petitioner, relating to their tax returns filed earlier. That process remained underway.

4. Then on 25.01.2021, the Petitioner filed an application under section 114(6) of the ITO 2001, seeking permission to file a Revised Return of their income (**"Revision Application"**), as the Petitioner wanted to correct their filing of *'unaudited'* accounts, and submit *'audited'* accounts. As per counsel for the Petitioner, it was a simple correction sought by them, to ensure conformity with Rule 34 of the ITR 2002.

5. The Respondent No. 3 sought a clarification[4] from the Petitioner, regarding applicability of section 114(6**A**) ITO 2001 to their Revision Application, against which the Petitioner submitted a response,[5] which *inter alia* stated that section 114(6**A**) ITO 2001 was not applicable to the matter at hand.

6. On the same date as submission of their response, i.e. 19.02.2021, the Respondent No. 3 passed an order declining the Revision Application, thereby refusing the Petitioner's request to file a revision to their return of income for the said tax year 2019.

7. Subsequently, the FBR / Respondents passed an assessment order dated 22.02.2021 against the Petitioner, in which the Petitioner was held liable for a payment of Rs.512,621,069/- for the said tax year 2019.[6]

[2] At pg. 57
[3] At pg. 61
[4] Page 181
[5] Page 183
[6] Page 193

8. Various correspondences were further exchanged between the Respondent No. 3 and the Petitioner,[7] in which Respondent No. 3 requested the Petitioner to provide a reason for condoning the Petitioner's Revision Application, which was previously rejected.

9. It is relevant to clarify that the matter pertaining to the assessment orders/recoveries of income relating to the Petitioner was/is being dealt with independently through the mechanism provided under the ITO 2001, and not through the instant Petition. The Petitioner's sole purpose for filing the instant petition is to challenge the Impugned Order, which the Petitioner has contended is erroneous under law. The gist of the Petitioner's reasoning is that the Impugned Order is premised on a wrongful legal misconception of law, in that the provision of section 114 (6**A**) ITO 2001 has inaccurately been applied by Respondent No. 3, whereas the Petitioner contends that section 114(6) ITO 2001 was the correct provision under which the Petitioner filed their Revision Application. Counsel for the Petitioner further contended that when a person files a revised return beyond a period of sixty (60) days from filing their initial return, then written approval of the Commissioner is required under section 114(6) ITO 2001. He emphasized that this was their only contention, and in no manner did section 114(6**A**) ITO 2001 come into play.

10. In order to properly ascertain and understand the concept behind the said provisions, which are the subject matter herein, the relevant portions of the ITO and ITR are hereby reproduced for purposes of convenience;

> **114. Return of income**. — (1) Subject to this Ordinance, the following persons are required to furnish a return of income for a tax year, namely:– [(a) every company;] …..
>
> [(2) A return of income –
>
> (a) shall be in the prescribed form and shall be accompanied by such annexures, statements or documents as may be prescribed [:
> Provided that the Board may prescribe different returns for different classes of income or persons including persons subject to final taxation;]

[7] Pages 241-243

b) shall fully state all the relevant particulars or information as specified in the form of return, including a declaration of the records kept by the taxpayer;

(c) shall be signed by the person, being an individual, or the person's representative where section 172 applies;

(d) shall be accompanied with evidence of payment of due tax as per return of income;

e) shall be accompanied with a wealth statement as required under section 116; and

(f) shall be accompanied with a foreign income and assets statement as required under section 116A.

(6) Subject to sub-section (6A), any person who, having furnished a return, discovers any omission or wrong statement therein, may file revised return subject to the following conditions, namely: —

(a) it is accompanied by the revised accounts or revised audited accounts, as the case may be [:] [Provided that Commissioner may waive this condition if the Commissioner is satisfied that filing of revised accounts or audited accounts is not necessary;]

(b) the reasons for revision of return, in writing, duly signed, by the taxpayers are filed with the return

[(ba) it is accompanied by approval of the Commissioner in writing for revision of return; and]

[(c) taxable income declared is not less than and loss declared is not more than income or loss, as the case may be, determined by an order issued under sections 121, 122, 122A, 129, 132, 133 or 221:-

Provided that if any of the above conditions is not fulfilled, the return furnished shall be treated as an invalid return as if it had not been furnished] [:]

Provided further that the condition specified in clause (ba) shall not apply if revised return is filed within sixty days of filing of return:

Provided also that where the Commissioner has not made an order of approval in writing, for revision of return, before the expiration of sixty days from the date when the revision of return was sought, the approval required under clause (ba) shall be deemed to have been granted by the Commissioner, and condition specified in clause (ba) shall not apply:

[Provided also that condition specified in clause (ba) shall not apply and the approval required thereunder shall be deemed to have been granted by the Commissioner, if-

(a) the Commissioner has not made an order of approval in writing, for revision of return, before the expiration of sixty days from the date when the revision of return was sought; or

(b) taxable income declared is more than or the loss declared is less than the income or loss, as the case may be, determined under section 120:

"Provided also that the Commissioner shall grant approval in case of a bonafide omission or wrong statement.

(6A) If a taxpayer [files] a revised return voluntarily along with deposit of the amount of tax short paid or amount of tax sought to be evaded along with the default surcharge, whenever it comes to his notice, before receipt of notice under sections 177 or sub-section(9) of 122, no penalty shall be recovered from him:

Provided that in case the taxpayer [deposits] the amount of tax as pointed out by the Commissioner during the audit or before the issuance of notice under subsection (9) of section 122, he shall deposit the amount of tax sought to be evaded, the default surcharge and twentyfive per cent of the penalties leviable under the Ordinance along with the revised return:

Provided further that in case the taxpayer [revises] the return after the issuance of a show cause notice under sub-section (9) of section 122, he shall deposit the amount of tax sought to be evaded, default surcharge and fifty per cent of the leviable penalties under the Ordinance along with the revised return and thereafter, the show cause

notice shall stand abated] (*emphasis supplied on the relevant sub-sections*).

11. Additionally, Rule 34 of the ITR 2002 (also relevant) reads:-

> [34. Return of income. - (1) This rule shall apply to provide for the furnishing of returns of income.
>
> [(2) A return of income as required to be furnished under section 114 shall be in the form as specified in AnnexureXIII of Part VI of the Second Schedule
>
> > [: Provided that where return has been furnished prior to coming into force of Notification No.S.R.O.1891(I)/2022, dated the 13th day of October, 2022, the form specified in the said Notification shall be furnished separately by the 31st December, 2022.]]
>
> (3) A return of income shall be verified in the manner specified in the form.
>
> (4) A return of income shall be accompanied by the following, namely:-
>
> (a) applicable documents;
>
> (b) statements;
>
> (c) certificates;
>
> (d) annexes; [and]
>
> (e) in case of companies, the return of income **shall be accompanied by audited accounts** and reconciliation of profits as per accounts and taxable income as declared in the return.

12. The first pertinent point to highlight is that the words "if a taxpayer <u>files</u> a revised return" were inserted in section 114(6**A**) vide the Finance Act 2011. Prior to this insertion, section 114 (6**A**) ITO 2001 read "if a taxpayer <u>wishes to file</u> a revised return" (*emphasis supplied*). By specifically amending the from the words *'<u>wishes</u> to file'* to simply *'files'*, illustrates that the legislature in their wisdom changed this section 114(6**A**) to become applicable only *<u>after</u>* the taxpayer has filed a revised return. Parliament is the body competent to legislate, and if they have made such alteration / amendment in a statute, the amended provision must be adhered and given effect. This age-old principle has long been

established in our Country's jurisprudence. Justice Hamoodur Rehman whilst speaking for the Supreme Court in the case of *Pakistan Tobacco Co. Ltd. v KMC*[8] pronounced:

> *"a Legislature is deemed to be aware of the previous state of the law and if knowing this it makes a change when repealing it and re enacting some of its provisions the intention is clearly to effect a change".*

13. Grievance of the Petitioner, simply put, is that they submitted an application for filing of their Revised Returns, beyond sixty (60) days of filing their initial returns, and therefore [by virtue of section 114(6)(ba) ITO 2001], written permission of the Respondent No. 3 was required before such revised filing, which was denied to them (by Respondent No. 3). Counsel for the Petitioner has argued that the Impugned Order wrongly relied upon section 114(6**A**) ITO 2001, which, as per the Petitioner, is only applicable in cases where a revised return has been filed voluntarily when finding an error. He states that there was no error on part of the Petitioner, but they simply wanted to furnish the same accounts in an audited version (as opposed to the unaudited version filed earlier by them), to be compliant with Rule 34 ITR 2002.

14. This (above) submission by the Petitioner is *prima facie* apparent from the record, and need not be dissected any further. The entire complaint of the Petitioner is that permission for filing a revised return (with audited accounts) was rejected by Respondent No. 3 (vide the Impugned Order); the corollary of which is therefore admittedly that the Petitioners' Revised Returns were not filed (due to the permission being denied). For reasoning already explained in the preceding Paras,[9] since the Petitioner's Revised Returns were not yet filed, section 114(6**A**) ITO 2001 would not come into effect.

[8] P 1967 SC 241

[9] Specifically Para No. 12

15. Learned counsel for the Respondents controverted the submissions put forth by the Petitioner. He submitted that since the SCN was issued to the Petitioner prior to their filing of the Revision Application, section 114(6**A**) ITO 2001 would be applicable and the default surcharge and penalties were rightfully to be imposed upon the Petitioner, as envisaged under the said section 114(6**A**). Learned counsel has further referred to detailed correspondence issued by the Respondent No. 3 dated 26.01.2021,[10] in which

prior authentication was sought from the Petitioner pertaining to their claim, but the Petitioner had failed to file any appropriate response, despite all chances being given to them. He continued that the conditions put forward to the Petitioner required to facilitate their Application for filing Revised Returns remained unfilled by them, and therefore the matter was accordingly correctly adjudicated by the Respondent No. 3, in accordance with law, which culminated into the Impugned Order.

16. Learned counsel for the Respondent has concluded by stating that the Petitioner has also already availed the statutory remedies which are under process, and since the statutory mechanism *inter alia* provides for the Respondents No. 2 & 3 to resolve such matter at the primary levels, an alternate remedy being available to the Petitioner, no ground for interference is made out, and as such, the instant Petition is liable to be dismissed.

17. We have heard the learned counsels and find that the first issue on which we pass our findings is as to whether section 114(6**<u>A</u>**) of the ITO 2001 would be applicable to the instant matter? As we have already opined (*supra*) that section 114(6) ITO 2001, clearly provides that where any person has discovered any omission or wrong statement in their tax returns, they can file revised returns. However, if the said revised returns are to be filed beyond 60 days from filing of the initial returns, then approval of the Commissioner FBR in writing is required.

[10] Page 181

18. The Petitioner filed their Application for submitting Revised Returns beyond the 60 day period, hence requiring written permission of Respondent No. 3. The said permission was rejected, and therefore the revised returns could not be said to have been filed by the Petitioner. For reasoning already elaborated upon by us in Para No. 12 *ibid.*,[11] this would automatically estop section 114(6**A**) ITO 2001 from coming into effect. The wordings of section 114(6**A**) ITO 2001 clearly provide to take effect if a taxpayer **<u>'files'</u>** a revised return, therefore eliminating invocation of this section if such a revised return is not filed. A bare reading of this section substantiates the same. It is trite

law that in fiscal statutes statutory interpretation must be taken with the words apparent, and nothing should be read into the statute. In *Allied Bank Ltd. v Commissioner of Income Tax & Ors.*[12] the Supreme Court *inter alia* held: *"It is well settled that a literal approach is to be adopted while interpreting fiscal or taxing statutes, and the Court cannot read into or impute something when the provisions of a taxing statute are clear. While interpreting a taxing statute, the Court must look to the words of the statute and interpret it in light of what is clearly expressed therein, and it cannot imply something which is not expressed or import provisions in the statute so as to support any assumed deficiency".*

19. The second point of our consideration is that the Impugned Order has been made in a vague and non-speaking manner. Where a matter is adjudicated, particularly when having a fiscal impact, then such order needs to be clear and elaborate.

20. The Impugned Order passed by Respondent No. 3 reads:

> *"The application has been examined on merits and as per provision of law you were required to deposit the amount of tax sought to be evaded if you wish to revise return of Income after the issuance of the show cause notice u/s 122 (9) of the Income Tax Ordinance, 2001 and attach a proposed draft return along with your application. However, you did not*

[11] And therefore need not be reiterated in the instant Para

> *fulfill your legal obligations. An assignment was issued to you on 04-Feb2021 for compliance by 19-Feb-2021. It has been noted that you have not made compliance till due date. As a result of non-compliance your application for revision of return is hereby refused."*

21. A perusal of the Impugned Order shows that there was no proper expounding provided; and the Impugned Order has failed to justify their rationale or reasoning for bridging the provisions of section 114(6A) with section 122 (9) ITO 2001 (which appears to have been done by Respondent No. 3); nor does the Impugned Order provide an explanation as to what is meant by the "merits" and "law" referred in the Order. Such generalized and

[12] 2023 SCMR 116

vague statements are contrary to settled jurisprudence,[13] as well as section 24A of the General Clauses Act 1897.

22. Although the above show the flaws stemming from the Impugned Order, we however do not agree with submissions put forth by the Petitioner on the point that under Rule 34 of the ITR 2002 read with provisions of the ITO 2001, it was mandatory for Respondent No. 3 to accept the Petitioner's Application for filing their audited accounts through a Revised Return. Whilst we do not outrightly agree with these assertions of the Petitioner, we restrain ourselves from passing any finding in this regard, as this should also have been addressed (one way or another) by the Respondent No. 3 when passing the Order. Respondent No. 3 also ought to have kept in mind the impact of the Petitioner not having filed audited accounts with their initial tax returns, keeping in mind the relevant provisions of the ITO 2001 and ITR 2002.[14]

23. Due to the foregoing reasons, we find the Impugned Order was passed in derogation of law, and is therefore set aside. The said Revision Application filed by the Petitioner may be heard by Respondent No. 3

afresh, who shall consider the deliberations and observations made in this Judgment, and accordingly pass a proper speaking order, in consonance with all due law and process.

24. This Petition is **allowed** in the foregoing terms.

JUDGE

JUDGE

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[13] 2026 PTD 957; 2015 PTD 936 [14] Keeping in mind various provisions under the ITO 2001, e.g. such as section 120