IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman

Mr. Justice Dr. Shah Nawaz Memon

Income Tax Reference Application No. 306 of 2024

Ms. Imtiaz Shabbir versus The Commissioner Inland Revenue, Unit-05, Range-B, Zone-AEOI, Large Taxpayer Office, Karachi

Income Tax Reference Application No. 307 of 2024

Ms. Imtiaz Shabbir versus The Commissioner Inland Revenue, Unit-05, Range-B, Zone-AEOI, Large Taxpayer Office, Karachi

Date of hearing:	16.09.2026
Date of decision:	16.09.2026

Applicant:	Through Mr. Muhammad Waleed, Advocate.
Respondent:	Through Mr. Asad Aftab Solangi, Advocate.

O R D E R

DR. SHAH NAWAZ MEMON, J.: — These two connected Reference Applications, preferred by the applicant taxpayer under section 133(1) of the Income Tax Ordinance, 2001 (*"the Ordinance"*), as amended by the Tax Laws (Amendment) Act, 2024, arise between the same parties out of two orders of the Commissioner Inland Revenue (Appeals-I), Large Taxpayer Office, Karachi, both dated 28.06.2024, in respect of the tax years 2017 and 2018 respectively. They raise identical questions upon identical facts, were heard together, and are disposed of by this common order.

I. THE FACTS

1. The applicant is an individual who carries on business as the sole proprietor of M/s. National Engineering & Packaging Co., Karachi. Her returns of income for the tax years 2017 and 2018 were taken to be assessment orders issued under section 120 of the Ordinance. In the wealth statements filed for those years she declared inflows of Rs.15,618,664/- and Rs.5,274,291/- respectively as exempt receipts, being foreign exchange remitted from outside Pakistan through normal banking channels by foreign principals for whom, on her case, she carried out promotional activity in Pakistan under agency agreements.

2. Both matters were taken up in the Automatic Exchange of Information Zone of the Large Taxpayer Office, Karachi. For the tax year 2017 a notice under section 176 of the Ordinance was issued on 12.10.2022 calling for documentary evidence in support of the claim, to which the applicant replied on 03.01.2023 and 27.01.2023. A show cause notice under section 122(9) of the Ordinance followed on 30.01.2023, in answer to which ten Proceed Realization Certificates issued by a scheduled bank, aggregating Rs.15,618,664/-, together with bank statements and the agency agreements, were furnished on 06.02.2023. The assessing officer was not satisfied with the explanation and amended the deemed assessment order under section 122(1) read with section 122(5) of the Ordinance, adding the said sum to the income of the applicant under section 111 and raising a demand of Rs.4,663,094/-. The appeal of the applicant was dismissed for non-attendance on 12.07.2023 and, on second appeal, the learned Appellate Tribunal Inland Revenue by order dated 26.10.2023 remanded the matter for a fresh decision after an adequate opportunity of hearing. In the remand proceedings a fresh show cause notice was issued on 12.12.2023 and, after replies dated 29.12.2023 and 14.02.2024, the assessing officer by order dated 20.02.2024, passed under section 124 read with section 132 of the Ordinance, repeated the addition and re-created the demand.

3. For the tax year 2018 the course of the proceedings was the same in substance. A notice under section 176(1) of the Ordinance was issued on 13.11.2023 and replied to on 22.11.2023; a show cause notice under section 122(9) was issued on 21.12.2023 and replied to on 29.12.2023, again with the Proceed Realization Certificates and bank verification; and by order dated 02.04.2024 passed under section 122(1) of the Ordinance the assessing officer added Rs.5,274,291/- to the income of the applicant under section 111 and raised a demand of Rs.1,066,447/-.

4. The reasoning of the assessing officer, shortly stated, was that the Proceed Realization Certificates showed the amounts to have been remitted by foreign companies to her proprietary concern, that the receipts were therefore business income of a resident taxpayer chargeable under section 11(5) of the Ordinance upon world income, and that the immunity conferred by section 111(4) of the Ordinance was intended for remittances sent home by non-residents to their families and not for business receipts. By the two orders dated 28.06.2024 now impugned, the Commissioner Inland Revenue (Appeals-I) held that the applicant had received the amounts by way of reimbursement of business related expenses and had inflated her wealth statements under the guise of foreign remittances, and

confirmed the orders of the assessing officer. Hence these Reference Applications.

II. THE QUESTIONS PROPOSED

5. The questions proposed in both matters are identical, and are these:

> (i) Whether the learned Commissioner-IR (Appeals) was justified in confirming the Order of respondent whereas section 111(4) of ITO, 2001 was fully applicable in applicant case.
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> (ii) Whether the learned Commissioner-IR (Appeals) was justified in confirming the Order of respondent whereas the applicant was under exemption under section 111(4) of ITO, 2001 and do not attract additions under section 111(1) of ITO, 2001.
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> (iii) Whether, section 111 of ITO, 2001 invoked without issuing separate notice under section 111 of ITO, 2001 made the whole proceeding null and void as not followed the principle set by the Hon'ble Apex Court.
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> (iv) Whether, the learned Commissioner-IR (Appeals) legally erred in applying retrospective application whereas no intention of such application was given preference by the legislature.

III. THE SUBMISSIONS AT THE BAR

6. Mr. Muhammad Waleed, learned counsel for the applicant, contended that the addition under section 111 of the Ordinance had been made without any separate notice having been issued under that section, and that in terms of the judgment of the Hon'ble Supreme Court in *Millat Tractors*[1] the department was, in the absence of such a notice, without any definite information upon which the deemed assessment orders could be amended. He further contended that section 111(4) of the Ordinance, as it stood in the tax years in question, imposed no monetary limit upon the amount of foreign exchange to which the immunity attached, the limit relied upon by the assessing officer having been introduced by the Finance Act, 2018, and that the three conditions of that provision, namely remittance of foreign exchange from outside Pakistan through normal banking channels, encashment into rupees by a scheduled bank and the production of a certificate of that bank to that effect, stood satisfied upon the record.

7. Responding to the objection founded upon *Millat Tractors*, Mr. Asad Aftab Solangi, learned counsel for the respondent department, submitted that these matters pertain to the years 2017 and 2018, when section 122 of the Ordinance provided that a deemed assessment order could be modified on the basis of definite information acquired from an audit *or otherwise*; that the proceedings

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[1] *Commissioner Inland Revenue, Lahore v. Messrs Millat Tractors Limited, Lahore and others* [2024 SCMR 700].

were initiated after information had been sought under section 176 of the Ordinance; and that the taxpayer was given full opportunity and was confronted with definite information about the remittances. He further submitted that even in terms of section 122(8) of the Ordinance the information of foreign assets is definite information, and that the information in the present case, having been obtained through the automatic exchange of information under an international agreement, is on that account definite information within the meaning of section 122(8). He maintained that *Millat Tractors* is not applicable to the facts and circumstances of these cases.

8. In rebuttal, learned counsel for the applicant stated that in similar matters this Court has already remanded the proceedings to the assessing officer with a direction to initiate and conclude them in compliance with *Millat Tractors*, and referred us in particular to the order dated 13.05.2025 passed by a Division Bench of this Court in Income Tax Reference Application No. 476 of 2024,[2] in which, upon the same controversy as to the passing of a combined order by the assessing officer under sections 111 and 122 of the Ordinance, and with Mr. Asad Aftab Solangi appearing for the department, the orders of the fora below were set aside and the matter was remanded to the assessing officer to proceed pursuant to the issuance of a notice under section 111 of the Ordinance upon the guidelines laid down by the Hon'ble Supreme Court. To that proposal Mr. Asad Aftab Solangi candidly agreed.

IV. CONSIDERATION

9. We have heard learned counsel for the parties and have perused the record. The tax years before us being 2017 and 2018, the amendment of the deemed assessment orders is governed by section 122(5) of the Ordinance as it stood before its substitution by the Finance Act, 2020, and by section 111 of the Ordinance as it stood before the insertion of the Explanation by the Finance Act, 2021. That is precisely the state of the law which came up for construction in *Millat Tractors*, where the Hon'ble Supreme Court held that proceedings under sections 111 and 122 of the Ordinance are different and distinguishable in nature and cannot be subsumed one within the other; that the material in the hands of the department under section 111(1) is, at that stage, mere information; and that it is only after the taxpayer has been confronted with that material through a separate notice under section 111, an explanation has been called for, and the Commissioner has formed an opinion upon the explanation offered or upon the absence of it, that such material transforms or crystallises into *definite*

[2] Order dated 13.05.2025 passed in Income Tax Reference Application No. 476 of 2024 (unreported).

information for the purposes of section 122(5), whereupon the taxpayer is to be confronted through a notice under section 122(9) with the grounds available under that subsection.[3] Their Lordships further held that the Explanation added to section 111 by the Finance Act, 2021, which dispenses with the requirement of a separate notice, abridges a substantive right of the taxpayer and operates prospectively alone.[4] That Explanation can therefore have no application to the years before us. The law declared in *Millat Tractors* is thus attracted in terms, and is binding upon all authorities under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973.

10. It is upon that footing that this Court remanded the matter in Income Tax Reference Application No. 476 of 2024, and we are in respectful agreement with the course there adopted. The course to which learned counsel for the parties are now agreed is in conformity with the law declared by the Hon'ble Supreme Court, and we see no reason to withhold our approval from it.

11. We should add that the contention of the department that information received through the automatic exchange of information under an international agreement is, of itself, definite information within the meaning of section 122(8) of the Ordinance, and the contention of the applicant founded upon section 111(4) of the Ordinance as it stood in the tax years in question, both raise questions of some importance upon which, in the view we take of these matters, it is neither necessary nor proper for us to express any opinion. We accordingly refrain from doing so, and those questions, along with all other questions of fact and law available to either side, will remain open before the assessing officer.

V. ORDER

12. For the foregoing reasons, and by consent of the parties, the two orders dated 28.06.2024 passed by the Commissioner Inland Revenue (Appeals-I), Large Taxpayer Office, Karachi, and the orders dated 20.02.2024 and 02.04.2024 passed by the Deputy Commissioner Inland Revenue, Unit-AEOI-05, Range-B, Zone-AEOI, Large Taxpayer Office, Karachi in respect of the tax years 2017 and 2018 respectively, are set aside, and these matters are remanded to the assessing officer, who shall, after issuing a separate notice under section 111 of the Income Tax Ordinance, 2001 and after affording the applicant taxpayer a proper opportunity of being heard, decide them afresh in compliance with the ratio of *Millat Tractors* and in accordance with law, uninfluenced by the orders hereby

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[3] *Millat Tractors* [2024 SCMR 700], at paragraphs 10 and 11; see also *Commissioner Inland Revenue, Zone Bahawalpur, Regional Tax Office, Bahawalpur v. Messrs Bashir Ahmed (deceased) through L.Rs.* [2021 SCMR 1290].

[4] Ibid, at paragraphs 16 and 19.

set aside or by any observation made in this order. The questions proposed do not, in these circumstances, call for an answer, and are left open. These Reference Applications are disposed of in the above terms, with no order as to costs.

13. Let a copy of this order be sent under the seal of this Court and the signature of the Registrar to the Commissioner Inland Revenue (Appeals-I), Large Taxpayer Office, Karachi, in terms of section 133(5) of the Income Tax Ordinance, 2001.

J U D G E

J U D G E

Karachi, dated 16th day of September 2026

Ayaz PS.