

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. 242 of 2024

Abdul Sami versus The Commissioner Inland Revenue, Zone-I, Regional
Tax Office-II, Karachi

Date of hearing: 22.09.2026

Date of decision: 22.09.2026

Applicant: Through Mr. Muhammad Waleed, Advocate.

Respondent: Through Mr. S. Ahsan Ali Shah, Advocate.

ORDER

DR. SHAH NAWAZ MEMON, J.: — This Reference Application, 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, is directed against the order dated 29.05.2024 passed by the Commissioner Inland Revenue (Appeals-V), Karachi, whereby the addition of Rs.3,000,000/- made by the assessing officer on account of a gift declared by the applicant for the tax year 2017 was confirmed.

I. THE FACTS

2. The applicant is a salaried individual. His return of income for the tax year 2017, filed on 29.09.2017, was taken to be an assessment order under section 120 of the Ordinance. In the accompanying wealth statement he declared the receipt of Rs.3,000,000/- as a gift from his real brother, Mr. Muhammad Alauddin Sarwar, said to be a non-resident. A notice under section 176(1) of the Ordinance was issued on 07.02.2020 calling for evidence in support of the gift, followed by a show cause notice under section 122(9) of the Ordinance dated 04.01.2021, which the applicant answered on 22.08.2022 with a declaration of gift and a copy of the passport of the donor, and further documents were furnished in response to subsequent reminders.

3. The assessing officer, the Deputy Commissioner Inland Revenue, Unit-III, Range-I, Zone-I, Regional Tax Office-II, Karachi, was not satisfied with the explanation. By order dated 05.05.2023, passed under section 122(1) read with section 122(5) of the Ordinance, he held that the gift did not satisfy the requirements of section 39(3), treated the sum of Rs.3,000,000/- as income of the applicant under section 111(1)(b) of the Ordinance, amended the deemed assessment accordingly and raised a demand of Rs.604,069/-. The appeal of the applicant was dismissed by the Commissioner Inland Revenue (Appeals-V) by the order dated 29.05.2024 now impugned. Hence this Reference Application.

II. THE QUESTIONS PROPOSED

4. The applicant has proposed the following questions:

- (i) Whether, the learned Commissioner-IR (Appeals) was justified in confirming the Order of respondent whereas the cash gift was made between brothers as per Muslim personal law and section 39(3) of Ordinance, 2001 was not required to be adopted in applicant case.
- (ii) Whether, the Order of Commissioner-IR (Appeals) legally erred on the ground that section 122(5) invoked by the officer without invoking section 122(8) is against the principle of section 122(5) and order passed is without lawful jurisdiction.
- (iii) Whether, the Notice issued under section 176 of ITO, 2001 without delegating of powers under section 210 of ITO, 2001 by respondent to its officer made the Order in Original void.
- (iv) 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.
- (v) Whether, section 39(3) of Ordinance, 2001 to be followed in case of blood relatives which collide the provision of Article 227 of the Constitution.

III. THE SUBMISSIONS AT THE BAR

5. At the very outset, Mr. Muhammad Waleed, learned counsel for the applicant, submitted that the controversy is covered by the judgment of the Hon'ble Supreme Court in *Millat Tractors*,¹ inasmuch as the addition under section 111 of the Ordinance was made in

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

proceedings under section 122 without any separate notice having been issued under section 111. He submitted that this Court, in similar matters, has remanded the proceedings to the assessing officer so that the ratio of *Millat Tractors* is fully complied with, that is to say, a separate notice is issued under section 111 of the Ordinance, an order is passed thereon, and only thereafter further proceedings, if any, are taken under section 122 of the Ordinance. In support he relied upon the order passed by this Court in Income Tax Reference Application Nos. 306 and 307 of 2024 and the order passed in Income Tax Reference Application No. 476 of 2024.

6. Mr. S. Ahsan Ali Shah, learned counsel for the respondent department, when confronted, did not oppose the remand of the matter. He fairly stated that in similar circumstances this Court has passed several orders remanding the matters to the concerned officer, who then issues a fresh notice under section 111 of the Ordinance and passes an order afresh after affording an opportunity of hearing to the taxpayer.

IV. CONSIDERATION

7. We have heard learned counsel for the parties and have perused the record. The tax year before us being 2017, the amendment of the deemed assessment order 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 the very state of the law construed by the Hon'ble Supreme Court in *Millat Tractors*, where it was held that proceedings under sections 111 and 122 of the Ordinance are distinct 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 which crystallises into definite information for the purposes of section 122(5) only after the taxpayer has been confronted with it through a separate notice under section 111 and the Commissioner has formed an opinion upon the explanation offered, or upon the absence of one; and that the Explanation added to section 111 by

the Finance Act, 2021 operates prospectively alone.² The law so declared is binding under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973.

8. The order relied upon by learned counsel for the applicant was passed by this very Bench on 16.09.2026 in *Ms. Imtiaz Shabbir*,³ where, upon the same controversy arising for the tax years 2017 and 2018, this Court observed as under:

“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 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. 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. 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

²*Millat Tractors* [2024 SCMR 700], at paragraphs 10, 11, 16 and 19; see also *Commissioner Inland Revenue, Zone Bahawalpur, Regional Tax Office, Bahawalpur v. Messrs Bashir Ahmed (deceased) through LRs*, [2021 SCMR 1290].

³*Ms. Imtiaz Shabbir v. The Commissioner Inland Revenue, Unit-05, Range-B, Zone-AEOI, Large Taxpayer Office, Karachi*, Income Tax Reference Application Nos. 306 and 307 of 2024, order dated 16.09.2026 [2026 SHC KHI 1758].

Hon'ble Supreme Court, and we see no reason to withhold our approval from it.

...

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 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. ...”

(footnotes omitted)

9. That order, in turn, followed the earlier order dated 13.05.2025 passed by a Division Bench of this Court in Income Tax Reference Application No. 476 of 2024,⁴ upon the same controversy as to the passing of a combined order by the assessing officer under sections 111 and 122 of the Ordinance, in which 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. The course is thus a settled one in this Court.
10. The present case stands on the same footing. The addition of Rs.3,000,000/- was made under section 111(1)(b) of the Ordinance within the proceedings under section 122, upon a show cause notice issued under section 122(9), and no separate notice under section 111 was ever issued to the applicant. The joint request of learned counsel for the parties is thus in conformity with the law declared in *Millat Tractors* and with the course consistently followed by this Court, and we see no reason to depart from it.

⁴Order dated 13.05.2025 passed in Income Tax Reference Application No. 476 of 2024 (unreported).

11. Since the matter is to go back to the assessing officer, we refrain from expressing any opinion upon the remaining questions proposed, including those founded upon section 39(3) of the Ordinance, Article 227 of the Constitution, the want of delegation under section 210 of the Ordinance and section 122(8) of the Ordinance. 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 order dated 29.05.2024 passed by the Commissioner Inland Revenue (Appeals-V), Karachi, and the order dated 05.05.2023 passed by the Deputy Commissioner Inland Revenue, Unit-III, Range-I, Zone-I, Regional Tax Office-II, Karachi, in respect of the tax year 2017, are set aside, and the matter is 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 a proper opportunity of being heard, decide it afresh in the light of the judgment of the Hon'ble Supreme Court in *Millat Tractors* and in accordance with law, uninfluenced by the orders hereby 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. This Reference Application is 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-V), Karachi, in terms of section 133(5) of the Income Tax Ordinance, 2001.

JUDGE

JUDGE

Karachi, dated 22nd day of September 2026