

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Income Tax Reference Application 241 of 2024

Date	Order with signature of Judge.
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- 1. For hearing of CMA 1938/2024.
- 2. For regular hearing.

24.09.2025

Syed Asad Haider Kazmi, advocate for the applicant.
Mr. S. Ahsan Ali Shah, advocate for respondent.
Mr. Muhammad Akbar Khan, Assistant Attorney General.

It is jointly submitted that this reference may be disposed of in the terms of order dated 10.07.2024 rendered in ITRA No.267/2023, which reads as follows:

"The present ITRA is filed by the applicant challenging the order dated 16.05.2023 passed by the Appellate Tribunal, Inland Revenue of Pakistan, Karachi in ITA No.323/KB/2023 whereby appeal filed by the applicant was dismissed.

Brief facts of the case are that an order dated 26.02.2021 under Section 122(9) was passed by the Deputy Commissioner (Audit-II), Inland Revenue creating a demand of Rs.29,381,930/-, which was challenged by the applicant by filing appeal before the Commissioner Inland Revenue (Appeal), Karachi and vide order dated 23.09.2022 the aforementioned order of the Deputy Commissioner was confirmed / upheld. Thereafter, the applicant assailed said order by filing Appeal viz. ITA No.323/KB/2023 before the Appellate Tribunal Inland Revenue of Pakistan, Karachi, which was also dismissed by order dated 16.05.2023, which has been impugned in this ITRA.

Learned counsel for applicant while referring to the order of previous date, submits that a question of law was raised "as to whether for the amendment of assessments likely to be undertaken in terms of Section 122 of Income Tax Ordinance, 2001, a prior notice under Section 111 of ibid law is inevitable?" He while referring to the judgment of Supreme Court of Pakistan in Civil Appeals Nos.87 to 106 of 2024 in Civil Petitions Nos.2447-L/2022 and others in the case of Commissioner Inland Revenue v. Millat Tractors Limited, submits that in the said case the Supreme Court while answering similar questions of law has held that a separate notice is required to be issued under Section 111 before proceedings can be initiated under Section 122. He further submits that this petition may be disposed of in terms of aforementioned judgment of the Supreme Court of Pakistan. Counsel appearing on behalf of respondent No.1 and learned Assistant Attorney General extend no objection to such request.

For ready reference the relevant portions of judgment of Supreme Court of Pakistan dated 01.02.2024 are being reproduced hereunder:-

"11. Therefore, to answer the first question, and as applicable to the matters at hand, before an assessment can be amended under Section 122 on the basis of Section 111, the proceedings under Section 111(1) are to be initiated, the taxpayer is to be confronted with the information and the grounds applicable under Section 111(1) through a separate notice under the said provision, and then the proceedings are to be culminated through an appropriate order in the shape on opinion of the Commissioner. This then becomes definite information for the

purposes of Section 122(5), provided the grounds mentioned in Section 122(5) are applicable. The taxpayer is then to be confronted with these grounds through a notice under Section 122(9) and only then can an assessment be amended under Section 122.9 This view has also been recently taken by this Court in Bashir Ahmed 10 wherein it has also been held that a notice under Section 111 can be simultaneously issued with a notice under Section 122(9), however, proceedings under Section 111 have to be finalized first in terms of an opinion of the Commissioner so as to constitute definite information, as is required under Section 122(5) of the Ordinance.”

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“18. Our view that the process could only be lawfully undertaken in two steps in further fortified from Section 114(6A) of the Ordinance, which extends a right to the taxpayer that the taxpayer can voluntarily file a revised return and deposit the tax before the issuance of a notice under Section 122(9) of the Ordinance, and consequently avoid the penalty stipulated in Section 182²⁵ of the Ordinance vis-à-vis the provisions of Section 111 of the Ordinance. If it is held that both the proceedings under Section 111 and 122 are now subsumed, the taxpayer would be deprived of this right which can neither be the legislative intent and nor legally justified. Accordingly, this right, which the legislature has thoughtfully extended to the taxpayers, could only be protected and preserved if the proceedings under Section 111 of the Ordinance are initiated first and the taxpayer could opt to either revise his return with voluntary payment of tax without penalty or contest the proceedings and forego the said right.

19. Therefore, as far as the cases prior to the Explanation are concerned, a separate notice is required to be issued under Section 111 before proceedings can be initiated under Section 122. The simultaneity of notices issued under Section 111 and 122(9) is not of much consequence and the proceedings under Section 111 have to proceed first and be finalized before proceedings under Section 122 are formally taken up. After the introduction of the Explanation in Section 111 in the year 2021, a notice encompassing both the grounds under Section 111(1) and Section 122(5) can be issued under Section 122(9), however, the proceedings under Section 111 still have to be concluded first and thereafter the remaining part of the notice under Section 122(9) can be given effect to.”

*In view of above and keeping in view the no objection of respondents’ counsel, instant ITRA is disposed of and the impugned order is set-side. The case is remanded back to the department to decide the case of the applicant in terms of the order passed by the Supreme Court, referred to above, after notice under Section 111 of the Income Tax Ordinance, 2001.
The ITRA stands disposed of alongwith pending applications.”*

Order accordingly. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001.

Judge
Judge