

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

ITRA 590 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on CMA No.4765/2024.
2. For hearing of main case.

23.02.2026

Mr. Asad Aftab Solangi, advocate for the applicant.

Matter is pending since 2024 without any progress. Diary demonstrates that office has taken no effort to have the matter listed ever since. On 13.02.2026, following order was passed:

“13.02.2026

Mr. Asad Aftab Solangi Advocate files power on behalf of applicant which is taken on record. He seeks time to reformulate questions of law. At his request, to come up on 23.02.2026.”

Today learned counsel confined his challenge to seeking determination of the following question of law:

Whether, in the facts and circumstances of the case, the learned Commissioner (Appeals) was justified to annulled/delete on grounds of no inquiry could be made u/s 122(5A) of the Income Tax Ordinance, 2001 for the year under discussion 2020?

The relevant portion of the impugned order reads as follows:

“8. We have considered the submissions of learned representatives and have perused the relevant record From the perusal of the notices issued by the Additional Commissioner, order under section 122(5A) and marathon details, documents and replies filed during the proceedings under section 122(5A) by the appellant for both the years under review there is no doubt that in the instant case the Additional Commissioner was indulged in seeking details, documents, information and evidences on whims, surmises. assumptions, suspicion, guesswork and apprehensions which supports the contention of the appellant that the order sought to be amended was not erroneous in so far it is prejudicial to the interest of revenue. In our view the Additional Commissioner miserably failed to establish erroneousness or prejudice to the revenue through his initial notice. Similarly the Additional Commissioner not only issued/ made multiple notices/requests but required the taxpayer to file supporting evidences and justify the allow ability of claim which suggests that he had not been able to identify any erroneousness or prejudice to the interest of revenue in the order under section 120 sought to be amended. The additional data, information, document's or records were required by him to establish erroneousness and prejudice to the interest of revenue which falls clearly out of the scope of section 122(5A). We have found arguments of the learned A.Rs.

Convincing as the same are based on the ratio decidendi of the following reported judgments of this Tribunal relied upon while delivering the judgment in I.T.As. Nos. 1696, 1697, 1698, 1825, 1826, 1827/LB/2012, dated 9-1-2013.

5.3 I have also perused the Circular No. C No. 1(7) DT-14/92, dated: 10.02.1992 issued from Center Board of Revenue. For reference, the said circular is quoted below:

*C.No.1(7)DT-14/92
Government of Pakistan
Central Board of Revenue
Dated 10th February, 1992

Subject: ORDERS OF TRIBUNAL BINDING ON TAX OFFICIALS.

It has been brought to the notice of the Board by the learned ITAT through their order in ITA No. 684/HQ of 1990-91 (Assessment year 1989-90) (Copy enclosed) that the directions contained in their appellate orders are not being followed by the authorities below. The following observations were also made previously by the learned Tribunal in ITA No. 951/HQ of 1990-91 vide order dated August 5, 1991:-

"The order of this Tribunal is binding on the subordinate income tax authorities and, therefore, we deprecate the manner in which the Commissioner of Income Tax (Appeals) has side-tracked the order of this Tribunal. We disapprove such practice on the part of subordinate income tax authorities and expect that in future the orders passed by this Tribunal shall be properly respected and followed."

I am therefore, directed to request to show proper respect to the orders of the Income Tax Appellate Tribunal as they are of binding nature on all subordinate income tax authorities and required under the law to be followed.

3. The above instructions may kindly be brought to the notice of all concerned.

5.4 The above circular clearly speaks that the orders of the Tribunal are binding on Commissioner-IR, Appeals.

5.5 It is further added that the Honourable ATIR's decisions are binding on Commissioner-IR, Appeals, in terms of Explanation to Section 5 of the Law Reports Act, 1875 which reads as follows:

"Explanation: For the purpose of this Act the expression, Court or Tribunal includes the Federal Shariat Court, a Service Tribunal, the Income Tax Appellate Tribunal and the National Industrial Relations Commission."

5.6 The doctrine of stare decisis has constitutional and statutory command and thus needs to be implemented in letter and spirit. In light of the above explicit provisions, it can be safely concluded that an important element of our legal system is that the reasoning and decisions found in preceding cases are not simply considered with respect or as good guides, but are BINDING. This is known as the principle of stare rationibus decidendi, popularly referred to as stare decisis. It translates simply as 'let the decision stand Stare rationibus decidendi is the more accurate statement because it is the reasoning (rationibus) that is the vital binding element in judicial precedent.

5.7 Under the circumstances, by respectfully placing reliance on the above referred to orders of the Honourable ATIR, I hereby hold and declare that the learned ADIR in this issue of verification of expenses for the purpose of taking action u/s 20(1) of the

Ordinance, has acted without jurisdiction; therefore, it will serve the interest of justice to annul the impugned order and DELETE the impugned disallowance of Other Direct & Indirect Expenses.

5.8 As the foundation laid down for amendment proceedings u/s 122(5A) of the Ordinance is declared to be illegal, the impugned order has lost its authenticity, sanctity and legality as well. In this regard, respectful reliance is placed on the ratio decidend of august Supreme Court of Pakistan in the case of REHMATULLAH and others vs. SALEH KHAN and another (2007 SCMR 729), wherein it was held as under.-

“--When basic order is without lawful authority, then all superstructure built on it would fall on the ground automatically.”

Learned counsel states that while the notices under reference were issued on 24.08.2023, whereas, power to do so has been excised from statute w.e.f. 2021. Learned counsel remains unable to articulate as to how the said power could be exercised more than two years after the same having been removed from the statute.

Learned counsel is unable to displace or distinguish the observations of the learned appellate forum and could not substantiate that the conclusion drawn could not be rested on the rationale relied upon. In conclusion, no questions of law are articulated, arising here from for determination therefore, reference application is dismissed in limine.

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