

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

ITRA 364 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

1. For orders on office objections No.24 & 26.
2. For orders on CMA No.545/2023.
3. For hearing of main case.

19.05.2026

Mr. Jazib Aftab Memon, advocate files Vakalatnama on behalf of applicant, same is taken on record.

Matter is pending since 2023 without any progress. Diary demonstrates that in more than three years since inception no effort has been made by the applicant to have the matter listed or heard. Be that as it may, the impugned order observes as follows:

“13. We have assiduously examined the case record and have heard at length the arguments of the rival parties, well perused the case records and applicable judgments on the issues involved in this appeal, and in this respect, our findings are given as under:

Firstly, AR raised the legal objection relating to initiating the proceedings by obtaining the complete records as well as evidence under the section 122(5A) as it is the domain of section 177 indeed. Further, it was contented that the exercise of powers by the assessing officer is unlawful in terms of section 122(5A) as the action was taken into notice without particularly pin pointing anything erroneous and prejudicial to the interest of revenue, in the deemed order. As the proceedings are illegal being based on obtaining the details, documents, explanations and records from the Appellant. In this respect, the reliance placed on judgments reported as 2014 PTD (Trib.) 2085, 2017 PTD (Trib.) 1911& 2018 PTD (Trib.) 552, in later case, the Learned Tribunal held as under; "In the light of the above referred case RACHI law it is held that the first show-notice issued was defective as the same had no definite material to establish the co-existence of erroneousness and prejudice rather it needed further enquiries, no such information was available on record. The learned IAC had asked for documents/record and showed his intention or the estimation of bifurcate or apportion NTR or FTR expenditure disallowed the expense on its sweet will. Action was based on assumptions which as not allowable in proceedings under section 122(5A) of the Income Tax Ordinance, 2001. This action of the Assessing Officer was ab-initio illegal as there was no proper basis for invoking provisions of Section 122(5A) of the Income Tax Ordinance, 2001. Thus the amended order as well as the order of the learned CIR was cancelled". However, recently this view also endorsed by the Hon'ble High Court of Lahore (Multan Bench) in case reported as 2022 PTD 1411. However, in the said judgment the learned High Court as decided the similar issue of proceedings initiated under section 122 (5A) and observed as under: "We have heard the learned DR and also perused the relevant record available on file. We find that to invoke the provision of section 122(5A) two conditions i.e. erroneousness and prejudicial to the interest of revenue have to be simultaneously met but both these conditions are not available in

this case. Therefore, we are of the considered view that the order of the learned CIR (A) is well reasoned hence no interference in the impugned order is called for". Accordingly, after analyzing the facts and circumstances of the case and considering the available binding the judgments of the judicial forums, it is quite clear that the assessing officer without having lawful justifications had invoked the powers under section 122(5A) by requiring the series of documentary records and seeking the detailed explanation in this regard. Resultantly, the CIR (A) was required to take into consideration the legal lacuna in proceedings in presence of plethora judgments of many legal forums, thus, was not justified to remand back the order passed by the assessing officer and both below orders are declared unlawful, illegal and void ab initio in terms of above judgments. Further, We have observed that only one issue emerges from the pleadings which need adjudication in order to decide this appeal i.e. to give legal effect to this appeal or to decide the fate of this appeal per the decision pronounced by this ATIR vide its order dated 14-12-2021 passed in ITA No: 1465/KB/2015, covering the tax year 2013, also filed by the present appellant. Treatment of the impugned amount under the N.T.R regime is not ever disputed among the litigants, hence, the appellant's refund/adjustment right against the amount, in question, is never found part of the litigation, both at the original proceedings and first appeal stage. Meaning thereby appellant is fully entitled to claim adjustment/refund of this legitimate amount if the payments are verified."

The adjudication pivots on the plea that show cause notice was discrepant. No effort has been made to distinguish or displace the said findings and it is not demonstrated the conclusion could not be rested thereupon. Learned counsel presses extraneous questions which are prima facie argumentative in nature, require appreciation of evidence. Since no question of law has been articulated, 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