

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Income Tax Reference Application No.62 of 2025

DATE

ORDER WITH SIGNATURE OF JUDGE

Fresh case

1. For order on CMA No.309/2025
2. For hearing of main case

18.05.2026

Mr. Imtiaz Ali Solangi, Advocate for the applicant

This matter is pending since 2025 without any progress and even notice has not been issued till date. While the impugned judgment has been rendered on merits, learned counsel has only assailed condoning of delay of the appeal before the learned Tribunal, which in fact was undertaken by an earlier interlocutory order of the department. The same reads as follows:

“The taxpayer has filed this condonation application for delay in filing appeal against impugned order of Additional Commissioner (Audit-III), MTO, Karachi dated 07.12.2022 before this Tribunal with submission that the appeal could not be filed before this Tribunal within the prescribed time due to non-service of order physically and the appellant came to know about passing of order when notice u/s.140 issued for attachment of bank account, therefore, it is prayed that the delay may be condoned, as it was neither willful nor intentional but beyond control of the applicant.

2. On the other hand, learned DR opposed to the condonation application.

3. We have carefully considered the submissions. First of all, it is a well settled principle of natural justice that no one should be condemned unheard, and the other side should be heard as well. This principle is enshrined in the maxim 'Audi Alteram Partem and has its genesis in the right to fair trial as given under Article 10A of the Constitution. However, in the instant case non-service of order physically and the appellant came to know about passing of order when notice u/s.140 Issued for attachment of bank account. It is for this reason, that the taxpayer has filed application for condonation of delay. In this regard, Section 5 of the Limitation Act 1908 read with sub-section (4) of Section 131 of the Income Tax Ordinance, 2001 states that application may be admitted by the court even after the limitation period has expired, provided that sufficient cause is shown for the delay. Moreover, the Hon'ble Supreme Court of Pakistan has held in the judgment reported as PLD 1975 SC 678 that mere technicalities unless offering an insurmountable hurdle, should not be allowed to defeat the ends of justice. Here it must also be kept in consideration that rules are subservient of the courts, and where discretion is provided by the statute, the court can do away with them if reasonable basis is shown for the same by the litigants.

4. It is further observed that FBR has also issued Circular No. Secretary (Income Tax Policy) No.1(34) Secy. (ITP)/2018-22938-R dated 22.02.2018, in which the field formation had been instructed to ensure the physical/manual service In addition to electronic service of notices and orders, in order to provide adequate opportunity to the taxpayer, which is reproduced as follows:

“Subject SERVICE OF NOTICES AS PER SECTION 218 OF THE ITO, 2001.”

Section 218 of the Income Tax Ordinance, 2001 describes various modes through which a notice shall be treated as properly served upon an individual or a person. The modes of service stated in section 218 are personal service on the individual or the representative of the person, service through registered post or courier service on the registered office or address and where the person does not have such office or address, to any office or place of business through registered post, to the last known address in Pakistan or in the manner prescribed for service of a summons under the Code of Civil Procedure, 1908. Electronic mode of service is not expressly provided in section 218. However, electronic service is provided as substituted service in rule 20, Order V of the First Schedule to the Code of Civil Procedure, 1908. As per this rule, substituted service is ordered where there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or for any other reason where the summons cannot be served in the ordinary way.

2. As electronic service of notices is mentioned as a substitute to normal service, service of notices only through electronic means is not likely to be treated as proper service by the appellate authorities. It is worth emphasizing that indiscriminate reliance on electronic mode of service also creates problems for taxpayers, as they in certain cases are unable to access electronically transmitted notices and orders. It is therefore directed that all notices must be served as per any mode of service provided in section 218 and electronic service may be resorted to additional means of service for facilitation of the taxpayer and may not be treated as a legal mode of service."

5. In the judgment reported as 2001 MLD 1489, it was held that sufficient cause as defined under Section 5 of the Limitation Act, 1908 is one that is beyond the control of the party Invoking it. It was also held that such cause liberal Interpretation and must be determined in reference to the particular circumstances of the case. In light of the aforesaid judgments, we believe that the taxpayer, due to extraneous circumstances was genuinely rendered unable to file appeal in due time, and thus he has been able to show Sufficient cause for us to allow the condonation application. Hence, the captioned Miscellaneous Application is allowed so as to

enable both the contesting parties to argue their respective stances on merits.

6. Resultantly, the miscellaneous application for condonation is disposed off in the above man manner.”

Learned counsel has not been able to distinguish or displace the findings contained in the aforementioned order, however, irrespective thereof the said order is not the final order of the learned Tribunal. Vide judgment dated 04.12.2024, the learned Tribunal has decided the matter on merits and in respect thereof no cavil has been articulated by the learned counsel. Since no question of law has been articulated by the learned counsel before us, therefore, this 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

Asif