

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D – 2482 of 2017

Date	Order with signature of Judge
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Before:

**Mr. Justice Aqeel Ahmed Abbasi.
Mr. Justice Nazar Akbar.**

Hearing / Priority Case

1. For orders on office objection.
2. For hearing of Misc. No. 12148/2017.
3. For hearing of Main Case.

29.05.2017:

Mr. Anwar Kashif Mumtaz, advocate for the petitioner.
a/w. Mr. Ammar Athar Saeed, advocate.
Mr. Mir Hussain, Assistant Attorney General.

Pursuant to Court Notice, Mr. Muhammad Sarfraz Ali Metlo, advocate has shown appearance alongwith Mr. Asim Iftikhar, Commissioner Inland Revenue and Mr. Zia Agro, Additional Commissioner Inland Revenue, and has filed his vakalatnama on behalf of respondents, which is taken on record.

2. Learned counsel for the respondent, under instructions, submits that amended Assessment Order in respect of the Tax Year 2009 and Tax Year 2010 have already been passed, whereas, petitioner has already filed appeals before Commissioner (Appeals) against such order. Such fact is not disputed by the learned counsel for the petitioner, who submits that the directions as contained in the orders passed by this Court on 12.06.2015 and 24.03.2016 in C.P.No.D-3406/2015 filed by the same petitioner, have not been complied with by the respondents while passing the amended Assessment Order under Section 122(5A) for the Tax Year 2009 and Tax Year 2010.

3. The Commissioner, Inland Revenue present in Court, however, submits that in the earlier proceedings under Section 122(5A), though the point of apportionment of expenses

was dealt with by his predecessor, however, the proper application of relevant Rule 13 of the Income Tax Rules, 2002 was not considered, therefore, such amended assessment has been further amended by correctly interpreting the relevant provision of the rule relating to apportionment of expenses between NTR and FTR receipts.

4. We are not inclined to accept such explanation given by the Commissioner present in Court, as we are of the view that once an assessment is amended under Section 122(5A) of the Income Tax Ordinance, 2001 in respect of any particular legal issue, including the apportionment of expenses of NTR and FTR Receipts, it is the duty of the concerned officer to apply the correct law to the facts of the case once for all and thereafter pass appropriate order of Amendment assessment under Section 122(5A) of the Income Tax Ordinance, 2001, whereas, any Successor-in-office including a Commissioner of Income Tax, while exercising powers under Section 122(5A), cannot be permitted to further amend the assessment in respect of same legal issue on the pretext that correct law was not applied in the earlier order passed under Section 122(5A), as it would amount to review of its own order by the same authority, which is not permissible under the law. It is now settled legal position that if an assessment has already been amended by an Additional Commissioner or Commissioner of Income Tax under Section 66-A of the Income Tax Ordinance, 1979 or under Section 122(5A) of the Income Tax Ordinance, 2001, as the case may be, then such amended assessment cannot be further amended in respect of the legal issue, which has already been the subject matter of amendment in the earlier round of proceedings under section 66-A of the Income Tax Ordinance, or under Section 122(5A) of the Income Tax Ordinance, 2001. Reference in this regard can be made to the case of *Glaxo Laboratories Ltd. v. Inspecting Assistant Commissioner of Income Tax and others* reported as **(1992) 66 TAX 74 (S.C.Pak.)**.

5. While confronted with above legal position, the Commissioner present in Court, has candidly submitted that that he could not properly appreciate the directions as contained in the order passed by this Court on 24.03.2016 in C.P.No.D-3406/2015 in the earlier round of proceedings in the case of the petitioner as referred to hereinabove, however, submits that since an order has already been passed, which has been assailed by the petitioner by filing an appeal before Commissioner (Appeals), the petitioner may be directed to raise all such objections before the concerned Commissioner (Appeals), who shall decide the same in accordance with law, keeping in view the legal position stated hereinabove by this Court.

6. Learned counsel for the petitioner does not oppose such request of the officer present in Court, however, submits that instant petition may be disposed of with the directions to the Commissioner (Appeals) to pass appropriate orders in view of the legal position as stated hereinabove as well as the directions as contained in the order dated 24.03.2016 passed by this Court in C.P.No.D-3406/2015.

7. At this juncture, learned counsel for the petitioner has further requested that the respondents may be restrained from enforcing the recovery of the impugned demand, which is subject matter of appeal before Commissioner (Appeals) for the Tax Year 2009 and Tax Year 2010 till their final decision by the Commissioner (Appeals).

8. Accordingly, by consent, instant petition is being disposed of with the directions to the respondents not to enforce the recovery of impugned demand, which is subject matter of appeals before Commissioner (Appeals) in respect of the Tax Year 2009 and Tax Year 2010, till their final decision, whereas, it is expected that the Commissioner (Appeals) may decide the appeals of the petitioner keeping in view the legal position as stated hereinabove, preferably, within a period of four weeks from the date of receipt of

this order, which shall be communicated to the concerned Commissioner by the petitioner within a week.

Petition stands disposed of in the above terms alongwith listed application.

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