

# **IN THE HIGH COURT OF SINDH, KARACHI**

**Const. Petition No.D-6142 of 2020**

**Present:**  
**Mr. Justice Aqeel Ahmed Abbasi**  
**Justice Mrs. Rashida Asad**

**Priority**

1. For hearing of CMA No.26369/2020
2. For hearing of main case.

Muhammad Ahmed Mannan ..... Petitioner

Versus

Federation of Pakistan through Secretary,  
Revenue Division/Chairman, Federal Board of Revenue,  
Constitutional Avenue, Islamabad and others ..... Respondents

Petitioner : Through Mr. Jawaid Farooqi, Advocate  
Respondents : Through Mr. Shahid Ali Qureshi, Advocate  
Federation of Pakistan : Mr. Muhammad Aminullah Siddiqui, Asstt.  
Attorney General.  
Date of Hearing : 17-03-2021  
Date of Judgment : 17-03-2021

## **J U D G M E N T**

**Aqeel Ahmed Abbasi, J:-** Through instant petition, the petitioner has impugned the Show Cause Notice dated 01.12.2020 issued under Section 122(9) read with Notice dated 27.11.2020 issued under Section 111(1)(b) of the Income Tax Ordinance, 2001, for the Tax Year 2014, seeking amendment of assessment, for being time barred in terms of Section 122(2) of the Income Tax Ordinance, 2001, which according to learned counsel for the petitioner, provides limitation of five (05) years for making amendment of assessment from the end of the financial year in which Commissioner Inland Revenue has issued or treated to have been issued the assessment order to the taxpayer. According to learned counsel for the petitioner, in the instant case Return for the Tax Year 2014 was filed in the month of September, 2014, whereas, five (05) years period has expired on 30.06.2020, and the Return filed by the petitioner is deemed to have been

an assessment order for the Tax Year 2014, as no notice during this period has been issued to the petitioner. Learned counsel for the petitioner has further argued that the impugned Notices appear to have been issued in view of administrative Circular C.No.2(22)(IR-Operations)/2020 dated 30.06.2020 issued by the Federal Board of Revenue (FBR) on 30.06.2020, whereby, the limitation under Section 214A of the Income Tax Ordinance, 2001, Section 74 of the Sales Tax Act, 1990 and Section 43 of the Federal Excise Act, 2005, has been condoned and the period for finalization of proceedings for Tax Year 2014 has been extended upto 30.12.2020. However, according to learned counsel, the case of the petitioner is not even covered by the administrative Circular issued by the FBR in view of clause (iii) of such Circular, which provides that “cases where notices in pursuance of Section 122 of the Income Tax Ordinance, 2001, were issued prior to 30.06.2019 and are to be hit by limitation by 30.06.2020”, whereas, in the case of petitioner, no notice was ever issued to the petitioner prior to 30.06.2019, therefore, the aforesaid extended period of limitation, which according to learned counsel for petitioner, is otherwise illegal and contrary to express provision relating to limitation, is not attracted in the case of the petitioner.

2. Notices of instant petition were issued to the respondents and learned DAG, pursuant to which Mr. Shahid Ali Qureshi, has shown appearance, filed his vakalatnama on behalf of the respondents and has candidly stated that keeping in view the peculiar facts and circumstances of the instant case, the case of the petitioner is not covered by Circular being C.No.2(22)(IR-Operations)/2020 dated 30.06.2020, therefore, case of petitioner has to be governed under the provisions of Section 122(2) of the Income Tax Ordinance, 2001, which provides a period of limitation for five (05) years. However, it has been submitted by learned counsel, that in view of clause (i) of the aforesaid Circular, finalization of issues pertaining to Tax Year 2014 can be made upto 31.12.2020 irrespective of clause (iii) of such Circular as referred to hereinabove.

3. We have heard the learned counsel for the parties, perused the record with their assistance, and have also examined the provisions of Section 122(2) of the Income Tax Ordinance, 2001, as well as the provisions of Circular being C.No.2(22)(IR-Operations)/2020 dated 30.06.2020. Legal position with regard to the period of limitation of five (05) years as contained in Section 122(2) of the Income Tax Ordinance, 2001, clearly provides that an assessment cannot be amended after expiry of five (05) years from the end of financial year in which the Commissioner Inland Revenue has passed an assessment order and/or treated to have been issued an assessment order to the taxpayer. In the instant case, admittedly, the Return for the Tax Year 2014 was filed in September, 2014, whereas, five (05) years period from the end of financial year expired on 30.06.2020. No notice has admittedly been issued to the petitioner for making amendment to assessment upto 30.06.2019, therefore, the impugned Notices are hit by limitation as provided under the aforesaid provisions of law. As regards application of the aforesaid Circular, we may observe that the said Circular has been issued for the purposes of making amendment in the assessment for the Tax Year 2014 by extending the period of limitation upto 30.12.2020, whereas, the aforesaid Circular itself provides that extended period will be applicable in cases where Notices in pursuance of Section 122 of the Income Tax Ordinance, 2001, were issued prior to 30.06.2019, whereas, in the instant case, admittedly, such Notices have not been issued to the petitioner.

4. Accordingly, in view of hereinabove facts and circumstances of the case, instant petition is allowed, consequently, the impugned notices as referred to hereinabove are declared to be illegal, without lawful authority.

Petition stands allowed along with listed application in the above terms.

JUDGE

JUDGE