

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

(Extraordinary Reference Jurisdiction)

**I.T.R.A. No. 25 of 2018**

Date	Order with signature of Judge
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**Present:**

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

*For hearing of Main Case.*

**23.12.2020:**

Mr. Mushtaq Hussain Qazi, advocate for the applicant.

Mr. Ameer Bukhsh Metlo, advocate for the respondent.

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## **ORDER**

1. Through instant Income Tax Reference Application, the applicant proposed five questions, said to have arisen from the impugned order dated 28.09.2017 passed by the Appellate Tribunal Inland Revenue, Karachi, in ITA No.112/KB of 2015 (Tax Year 2008). However, after having read out the proposed questions and the impugned order passed by the Appellate Tribunal Inland Revenue in the instant case, learned counsel for the applicant submits that the applicant will press “**Question No.5 only**”, which according to learned counsel for the applicant, is a question of law arising from the impugned order of the Appellate Tribunal, and would resolve the legal controversy involved in the instant case, the question reads as follows:-

*“ Whether on the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified to uphold the act of the Additional Commissioner Inland Revenue to amend on 25.06.2014 the assessment for Tax Year 2008, made on 31.12.2008, on the basis of amendment in sub-section (2) and (4) of section 122 brought through Finance Act, 2009, thereby allowing the Additional Commissioner to finalize the amendment of assessment within five (05) years ending on 30.06.2014 condemning the*

*appellant unheard discarding the cardinal dictum of “audi alterim partem”?*

2. After having readout the impugned order passed by the Appellant Tribunal Inland Revenue learned counsel for the applicant at the very outset submits that the legal issue involved in the instant case, has already been decided in favour of assessee by the Hon'ble Supreme Court in the case of ***Additional Commissioner Inland Revenue, Audit Range, Zone-I and others v. M/s. Eden Builder Limited and others (PTCL 2018 CL 661)***, wherein, according to learned counsel, it has been held that the amendment brought in Section 122(2) through Finance Act, 2009, would not extend the period of limitation and will be applicable for the Tax Year 2009. In support of his contention, learned counsel for the applicant has readout the relevant paragraph 7 of the aforesaid judgment passed by the Hon'ble Supreme Court, the same reads as follows:-

*“7. Because the terminal date of limitation is not changing through the amendment brought about through the Finance Act, 2009 and because the period of limitation is not being extended per se therefore the authorities cited by the learned counsel for the appellants are of no avail and are distinguishable. In this view of the matter, hold that the various respondents, who filed their tax returns before the Section 122(2) of the ITO 2001 was amended through the Finance Act, 2009 will be governed by Section 122(2) ibid as it stood before the amendment and the amendment brought about in the said section through Finance Act, 2009 dated 30.06.2009 will not be attracted to their cases.”*

3. While confronted with hereinabove legal position, learned counsel for the respondent could not controvert the same and has candidly stated that the question proposed hereinabove is covered by the aforesaid judgment of the Hon'ble Supreme Court, however, submits that the amendment through Finance Act, 2009 in Section

122(2) will be attracted in the cases of Tax Year 2009 and onward. Such contention of the learned counsel for the respondent is not controverted by the learned counsel for the applicant, who submits that the proposed question may be answered in favour of the applicant and against the respondent/department as the case of the applicant pertains to Tax Year 2008.

4. We have heard the learned counsel for the parties, perused the proposed question and the impugned order passed by the Appellate Tribunal Inland Revenue, and have also gone through the judgment of the Hon'ble Supreme Court as referred to hereinabove, whereby, the effect of amendment introduced through Finance Act, 2009, in Section 122(2) of the Income Tax Ordinance, 2001, has been examined in detail. By respectfully following the judgment of the Hon'ble Supreme Court the proposed question is answered in **Negative** in favour of the applicant and against the respondent.

Instant reference application stands disposed of in the aforesaid terms.

Let copy of this order be sent to the Registrar, Appellate Tribunal Inland, Karachi, under the seal of the Court for information.

**JUDGE**

**JUDGE**