

**IN THE HIGH COURT OF SINDH, KARACHI**  
**CP Nos.D-2908 & 6768 of 2020**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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*BEFORE: Irfan Saadat Khan,  
Zulfiqar Ahmed Khan, JJ*

**CP Nos.D-2908 of 2020**

M/s. SKF Pakistan  
(Pvt.) Limited  
Petitioner : through M/s. Anwar Kashif  
Mumtaz & Usman Alam,  
Advocates.

..Vs..

Federation of Pakistan  
& others : Mr. Kafeel Ahmed Abbasi,  
Advocate for Inland Revenue.

**CP Nos.D-6768 of 2020**

Mr. Mohsin Ali Nathani  
Petitioner : through M/s. Anwar Kashif  
Mumtaz & Usman Alam,  
Advocates.

..Vs..

Federation of Pakistan  
& others : Mr. Ameer Baksh Metlo,  
Advocate for Inland Revenue.

Date of hearing : 15.12.2022

Date of decision : 04.01.2023

JUDGEMENT

**Irfan Saadat Khan, J.** The instant petitions have been filed seeking quashment of the extension letter dated 04.12.2019 issued by the Federal Board of Revenue (hereinafter referred to as FBR) whereby extension in time for finalization of audit proceedings have been granted upto 30.06.2020 for the tax year 2014 in some 459 cases and the case of the petitioner was among those 459

cases wherein the FBR has condoned the time limit in respect of cases selected for audit under Section 214C of the Income Tax Ordinance, 2001 (hereinafter referred to as the Ordinance) for the tax year 2014 as per the audit policy of 2015.

2. Briefly stated the facts of the case are that the petitioner in CP No.D-2908 of 2020, is a private limited company engaged in providing operational and technical services and is an agent of SKF Euro trade AB. The return of income for the tax year 2014 was filed by the petitioner on 19.11.2014 by declaring an income of Rs.10,718,147/-. As per the provisions of Section 120 of the Ordinance the said return was to be considered as an assessment order. On 28.5.2016 the case of the petitioner was selected for audit, under Section 177 read with Section 214C of the Ordinance. Replies thereof were furnished by the petitioner; however, no final order was passed by the Department. Thereafter on 02.6.2020 the Department, under Section 122(9) of the Ordinance, required from the petitioner to provide certain details. This time the petitioner objected through their letter dated 09.6.2020 that since the time limit for maintenance of books of accounts, as provided under Section 174 of the Ordinance, is six years hence the said notice was time barred. The said contention of the petitioner was however rejected by the Department and the petitioner was again asked, vide letter dated 18.6.2020, to provide complete record, details etc. In the meantime the FBR issued a letter dated 30.6.2020, by exercising its power under section 214A of the Ordinance, granting general condonation of limitation due to lockdown and rising in corona virus in the matters with regard to finalization of the issues pertaining to the tax year 2014. The FBR also granted general

condonation in respect of the cases set aside by appellate fora and the cases where notices under Section 122 of the Ordinance were issued prior to 30.06.2019 and were hit by limitation on 30.6.2020. It is through the instant petition that the letter dated 04.12.2019 as well as the power exercised by the FBR under Section 214A of the Ordinance with regard to condonation of delay in respect of the matters pertaining to tax year 2014 have been challenged.

3. In the petition bearing CP No.D-6768 of 2020 the petitioner is an individual, whose case was selected under Section 214C of the Ordinance through computer balloting with regard to tax year 2014. The petitioner was duly informed by the Department about selection of his case for audit and notice for furnishing details documents, books of accounts etc was also issued to him. The said notice was replied by the petitioner by raising legal objections that the proceedings initiated by the Department were time barred and by referring to another petition bearing CP No.D-6455/2020 wherein pre-admission notices have been issued to the Department as well as DAG and the Department was restrained from taking any adverse action against the petitioner, pursuant to the notice issued in that petition. In the instant petition also the powers of the FBR, as exercised under Section 214A of the Ordinance, have been challenged. Since the subject matter of both the present petitions are akin they were heard together and decided through this common judgment.

4. M/s. Anwar Kashif Mumtaz and Usman Alam Advocates have appeared on behalf of the petitioners and at the very outset

stated that the action taken by the department was time barred as, according to them, the department has issued the impugned notices under Section 122(9) of the Ordinance after six years, which they cannot do as provided under the provisions of Section 174 of the Ordinance. The learned counsel then read out the provisions of Sections 122(9) and 174 of the Ordinance. The learned counsel further stated that the said legal objection was taken by the petitioners at the very initial stage of the proceedings and have challenged that the basis of selecting the case for audit by the department was illegal and uncalled for but the department instead of considering the said replies furnished by the petitioners have acted in a perfunctory manner by proceeding against the petitioners, which prompted the petitioners to file the instant petitions. The learned counsel further stated that the petitioner in petition bearing C.P. No.D-2908 of 2020 has special tax year and has closed its accounts on 31<sup>st</sup> December. In the year under consideration the accounts of the said petitioner was closed on 31.12.2013, which pertained to the tax year 2014, hence for all practical purposes the department could only initiate against the said petitioner up till the period 31.12.2019 and not beyond this period. According to them, if the present case is examined it would be noted that the department has proceeded against the said petitioner in June 2020, which period is beyond the limitation period hence, according to them, the department has no authority under the law to proceed against the petitioner after limitation period, as provided under the law, and since the action is beyond the limitation period, therefore, the same is non-est in the eyes of law and is ab-initio void.

5. The learned counsel further submitted that since the very action was ab-initio void, hence the notices issued by the department or the extension granted by the FBR were illegal and are liable to be struck down. The learned counsel stated that the action of the department amounts to opening the proceedings in respect of a past and closed transaction, which cannot be done. In support of their contentions, the learned counsel have placed reliance on the decision given in the case of *Muhammad Moizuddin and another Vs. Mansoor Khalil and another* (**2017 SCMR 1787**) and stated that the notices issued by the department, for all practical purposes have to be considered as null and void. They stated that no doubt looking to the situation prevailing in the country due to lockdown or spread over of the corona virus the FBR have granted general condonation under Section 214A of the Ordinance, which is pari materia to Section 74 of the Sales Tax Act 1990 and Section 43 of Federal Excise Act 2005, but that power was exercised by the FBR after the expiry of the time period, which they cannot do. According to the learned counsel had the action of condoning the delay been initiated by the FBR within the limitation period, it could be argued that the action was within the time frame but if the facts of the present cases are examined, it would reveal that the action was taken by the department after the expiry of the limitation period and hence the very initiation of the proceedings initiated by the FBR or the concerned Commissioner after the time limit period was time barred and thus of no legal effect.

6. The learned counsel stated that once the period of limitation expires, a vested right is always created in favour of the litigant and therefore the action of the FBR was illegal. In support of their submissions, the learned counsel have placed reliance on the decisions given in the cases of *Additional Commissioner Inland Revenue, Audit Range, Zone-I and others Vs. Messrs Eden Builders Limited and others (2018 SCMR 991)* and *Khushi Muhammad through L.Rs. and other Vs. Mst. Fazal Bibi and others (PLD 2016 SC 872)*.

7. They further stated that the present action of the department amounts to creating unnecessary illegal additional demands against the petitioners which, according to them, cannot be done after the expiry of the limitation period and the delegation of the authority by the FBR to the department, in this regard, was also illegal and uncalled for. The learned counsel also invited our attention to the decision given in the case of *Federal Board of Revenue through its Chairman, Islamabad and others Vs. Abdul Ghani and another (2021 SCMR 1154)* on the ground that while interpreting the provision of Section 74 of the Sales Tax Act 1990, which is *pari materia* to Section 214A of the Ordinance, the Hon'ble Supreme Court has categorically observed that Section 74 of the Act cannot be interpreted to authorize unchecked reversal of a statutory limitation period and to disturb the consequential legal rights created in favour of the taxpayer. They, therefore, stated that in view of the above referred decision of the Hon'ble Supreme Court of Pakistan the action of the FBR or the department was illegal and may, therefore, may be vacated.

8. The learned counsel next placed reliance on the decisions given in the cases of *Sami Pharmaceutical (Pvt.) Ltd. and others. Vs. Province of Sindh through Chief Secretary and others (2021 PTD 731)* and *Mir Hassan Vs. Province of Sindh through Secretary and 3 others (2017 PLC (CS) 864)* that if a relief is given to a person, the same cannot be taken away as what has already been conferred by an Act, the said relief if taken back would frustrate the purpose of carrying out the provisions of the law or the purpose with which the said law was enacted. The learned counsel also invited our attention to the decision given by the Hon'ble Supreme Court in the case of *Commissioner Inland Revenue, Zone-IV, Lahore Vs. Messrs Panther Sports and Rubber Industries (Pvt.) Ltd. and others (2022 SCMR 1135)* wherein, according to them, the Hon'ble Apex Court has observed that the department should be vigilant and efficient to proceed against the taxpayer within the time limit, as provided under the law. In the end the learned counsel stated that since the above legal factors, going to the roots of the case, have not been fulfilled by the department, therefore, the action of the department cannot be considered to be a legal and lawful and the same needs to be vacated by allowing both the petitions, as the facts of the petitions are similar in nature.

9. M/s. Ameer Baksh Metlo, and Kafeel Ahmed Abbasi, Advocates have appeared on behalf of the Respondents and at the very outset stated that the instant petition is not maintainable as the same has been filed against a show cause notice. They stated that it is now a settled proposition of law that petitions against show cause notices are not maintainable as the petitioners are required to give proper replies to the show cause notices issued to

them and the action of bypassing the departmental procedures has never been appreciated by the higher authorities i.e. the High Courts & the Supreme Court of Pakistan. They stated that in the like manner the instant petition is not maintainable and the petitioner may be required to appear before the departmental authorities and give proper reply of the show cause notice issued to them. In support of their contention the learned counsel have placed reliance on the decision given in the case of *Commissioner of Inland Revenue and others ..Vs.. Jahangir Khan Tareen and others (2022 SCMR 92)*.

10. They further submitted that without prejudice to their above submissions the show cause notice was issued within the time and the petitioner was legally obliged to give its reply in accordance with law. They stated that the petitioner was not justified in submitting that the selection of their case was time barred and the extension granted by the FBR, under Section 214A of the Ordinance or the proceedings initiated under Section 214C for the Ordinance were not within the time. They stated that petitioners even have participated in the audit proceedings hence the filing of the present petition is nothing but an after thought on their part as how could they travel in two boats; one by giving replies, furnishing details and attending the office of the Tax Department and yet filing the instant petitions. According to the learned counsel once the taxpayer has submitted to the jurisdiction of the tax department by giving replies, furnishing details etc. they are precluded from challenging the jurisdiction of the department by way of filing writ petitions.



11. They further stated case of the petitioner was selected for audit by Commissioner under Section 177 of the Ordinance and not by the FBR, therefore the impression given by the petitioners that their cases were selected for audit by the FBR is incorrect as their cases were selected for audit by the concerned Commissioner, by exercising his powers under Section 177 of the Ordinance. They stated that under identical circumstances same taxpayers have filed petitions before the Lahore High Court, which were dismissed and subsequently before the Hon'ble Supreme Court of Pakistan also the judgments of the Lahore High Court, when challenged, were affirmed by the Apex Court. They further stated not a single document has been produced by the petitioners to show that their case was selected for audit by the FBR and not by the Commissioner; whereas through a statement the Department has placed on record necessary documents that the case of the petitioners was selected for audit by the Commissioner, they in this regard invited our attention to the notice dated 15.6.2016, which is available at page-7 of their comments.

12. The learned counsel next stated that the time limit for conducting the audit was upto 30.6.2020 and within this limitation period i.e. on 30.6.2020 the concerned authorities by exercising their powers have extended the time upto 31.12.2020 due to Covid-19 pandemic spread over the entire country which has slowed down all the economic activities of the country and even the public offices were closed down.

13. The learned counsel further stated that in the decision reported as *The Collector of Sales Tax, Gujranwala and others ..Vs.. Messrs Super Asia Muhammad Din and Sons and others* (2017 PTD

**1756**), the Hon'ble High Court while dealing with a case relating to Section 74 of the Sales Tax, which is pari-materia to section 177 of the Ordinance, have upheld the extension of period of six months' time. The learned counsel stated in the instant matter also the FBR while exercising its power under Section 214A has extended the time limit for finalizing the audit for six months due to the unavoidable circumstances prevailing in the country and thus the petitioner was not justified in challenging the said extension rather in their view the petitioner should have cooperated with the Department by filing necessary details/documents etc. They therefore, state that on this aspect also the petition is liable to be dismissed.

14. Learned counsel further stated that question of limitation is always a mixed question of facts and law and has to be decided on the basis of facts prevailing in that very matter and in the instant matter also period of limitation was extended due to the unavoidable situation prevailing in the entire world what to say of Pakistan alone due to the pandemic and therefore, under the given circumstance the petitioner was legally obliged to furnish whatever details and documents required from them by the Department in accordance with law. In support of their above contention the learned counsel placed reliance on the following decisions.

*i. Haji Abdul Sattar and others ..Vs.. Farooq Inayat and others (2013 SCMR 1493 @ 1496)*

*ii. Messrs Universal Business Equipment (Pvt.) Limited through Chief Executive ..Vs.. Deputy Collector of Customs, Customs House, Karachi and another (2014 PTD 1944 @ 1948)*

*iii. The Taxation officer / Deputy Commissioner of Income Tax, Lahore (2018 SCMR 1131).*

iv. *Messrs/s Attock Cement Pakistan Ltd., through Senior Manager Finance..Vs.. Additional Commissioner Inland Revenue (2016 PTD 1872).*

v. *The Taxation Officer/Deputy Commissioner of Income Tax, Lahore ..Vs.. Messrs Rupafil Ltd., and others (2018 SCMR 1131).*

vi. *Messrs Universal Business Equipment (Pvt.) Ltd., through Chief Executive ..Vs.. Deputy Collector of Customs, Customs House, Karachi and another (2004 PTD 1944).*

vii. *Pepsi Cola International (Private) Limited through Authorized Representative ..Vs.. Federatio of Pakistan through Secretary Revenue Division, Islamabad and another (2022 PTD 51).*

viii. *D.G. Khan Cement Co. Ltd., through Chief Financial Officer and others ..Vs.. Federal Board of Revenue through Chairman and 5 others (2020 PTD 2111).*

15. In the end the learned counsel stated that in view of these facts the petition is not maintainable and is liable to be dismissed with cost and the petitioners may be required to give a proper reply of the show cause notice issued to them. They also stated that the decisions relied upon by the learned counsel appearing for the petitioners are quite distinguishable and are not applicable to the facts obtaining in the instant petitions. They however assured the Court that if the petitioner cooperate with the Department and furnish the required details/documents etc. in a timely manner the assessment would be finalized within shortest possible time, after providing opportunity of hearing to the petitioner.

16. M/s. Anwar Kashif Mumtaz & Usman Alam, Advocates in their rebuttal have reiterated their earlier submissions and stated that FBR has not closed down the matters. They further state that the decisions relied upon by the learned counsel appearing for the Department are distinguishable in character.

17. We have heard all the learned counsel appearing for the petitioners and Federation as well as for the Department at considerable length and have perused the record as well as the law, facts and the decisions relied upon by them.

18. Before proceeding any further, we deem it appropriate to reproduce relevant provisions Section 122, 174, 177 & 214 of the Income Tax Ordinance, 2001 upon which the learned counsel have placed reliance, which reads as under:-

**122. Amendment of assessments.--**

(1).....  
.....

(2) No order under sub-section (1) shall be amended by the Commissioner after the expiry of five years from the end of the financial year in which the Commissioner has issued or treated to have issued the assessment order to the taxpayer.

(3).....  
.....

(4)(a) five years [from the end of the financial year in which] the Commissioner has issued or is treated as having issued the original assessment order to the taxpayer; or

**174.Records.--** (1).....  
.....

(2).....  
.....

(3) The accounts and documents required to be maintained under this section shall be maintained for [six] years after the end of the tax year to which they relate.

**177. Audit.--**[(1) The Commissioner may call for any record or documents including books of accounts maintained under this Ordinance or any other law for the time being in force for conducting audit of the income tax affairs of the person and where such record or documents

have been kept on electronic data, the person shall allow access to the Commissioner or the officer authorized by the Commissioner for use of machine and software on which such data is kept and the Commissioner or the officer may have access to the required information and data and duly attested hard copies of such information or data for the purpose of investigation and proceedings under this Ordinance in respect of such person or any other person:

Provided that—

- (a) the Commissioner may, after recording reasons in writing call for record or documents including books of accounts of the taxpayer; and
- (b) the reasons shall be communicated to the taxpayer while calling record or documents including books of accounts of the taxpayer:

Provided further that the Commissioner shall not call for record or documents of the taxpayer after expiry of six years from the end of the tax year to which they relate.]

**214A. Condonation of time limit.**— Where any time or period has been specified under any of the provisions of the Ordinance or rules made there-under within which any application is to be made or any act or thing is to be done, the Board may, [at any time before or after the expiry of such time or period,] in any case or class of cases, permit such application to be made or such act or thing to be done within such time or period as it may consider appropriate[.]

214B.....  
.....

**214C. Selection for audit by the Board.**— (1) The Board may select persons or classes of persons for audit of Income Tax affairs through computer ballot which may be random or parametric as the Board may deem fit.

19. It is an admitted position that the petitioner is maintaining special tax year, which starts on 1<sup>st</sup> January and ends on 31<sup>st</sup> December each year. In the year under consideration the subject

accounting period was 01.1.2013 to 31.12.2013 and the corresponding tax year was 2014.

20. From the perusal of the above provision of the law, it is apparent that proceedings under Section 122 of the Ordinance could be made within five years after the expiry of the financial year. If the facts of the present case are examined, the financial year corresponding to the petitioner would end on 30.6.2014. Now if five years period is counted from 30.6.2014 the same would end on 30.6.2019. If the provision of Section 174 of the Ordinance is examined, it would reveal that the accounts and documents required to be maintained would be six years after the end of tax year to which they relate. The tax year of the present petitioner was 2014, which pertained to the period 01.01.2013 to 31.12.2013 and the six years period would end on 31.12.2019.

21. The above factual position would reveal that for reopening of the matter the time limit in the case of the petitioner expired on 30.6.2019, whereas the mandatory condition for maintaining the accounts ended on 31.12.2019. The case of the petitioner was selected for audit in the year 2016 but the proceedings never culminated and no order under Section 122 of the Ordinance was ever passed by the Department. The FBR then by exercising its powers under Section 214C of the Ordinance on 04.12.2019 i.e. after the expiry of the period, as prescribed under Section 122 of the Ordinance and some 26 days prior to the expiry of time limit as prescribed under Section 174 of the Ordinance i.e. on 04.12.2019 extended the time for finalization of audit proceedings upto 30.6.2020, for the tax year 2014. It may be noted that in the present situation, as per Section 122 of the Ordinance, the time

limit for finalizing the assessment had already expired, whereas the time limit with regard to Section 174 of the Ordinance had remained available for few days only. It is also surprising to note that even after extension of the period by the FBR, the Department made no attempt to finalize the audit, if they were of the view that the same had not become time barred but on 09.6.2020 i.e. 21 days prior to the expiry of the time limit again issued a notice under Section 122(9) of the Ordinance to the petitioner. This time the petitioner not only wrote a letter to the Department that the proceedings were time barred but also filed the instant petition and obtained interim stay that *“till the next date of hearing no final order may be passed in the audit proceedings”*.

22. In the decision given by the Hon’ble Supreme Court in the case of *Collector of Sales Tax , Gujranwala and others ..Vs.. Super Asia Muhammad Din & Sons & others (2017 PTD 1756)*, it was held as under:-

“Thus we are of the opinion that while undoubtedly the Board has the power under section 74 supra to extend the time limit and permit an order under section 36 supra to be passed within such time or period as it may consider appropriate, such power must be exercised within a reasonable time period of six months from the date when the time period provided in the first proviso to section 36(3) supra and the extension granted thereunder have lapsed, and such power can only be exercised (by the Board under section 74 supra) to grant an extension of not more than a reasonable time period of six months”.

It could be seen from the above observation of the Hon’ble Supreme Court that while dealing with Section 74 of the Sales Tax Act, which is *pari materia* to Section 174 of the Ordinance, it was observed that though the FBR has the power to extend the time

but that period should be reasonable and a reasonable period, as per as per Hon'ble Apex Court, could be six months' time. Now if we revert back to the facts of the present case it would reveal that vide letter dated 04.12.2019 the FBR has extended the period of time of six months to complete the audit proceedings within a period of six months' time and on the very last date when the date was about to expire i.e 30.6.2020 again extended the time limit for another six months' time on the ground of pandemic being spread over the country.

23. We are of the view that once the FBR has extended the time for a reasonable period of six months i.e. 01.1.2020 to 30.6.2020 further extension of time for another six months could not be termed as reasonable or valid exercise of the powers under Section 214A or 214C of the Ordinance. In our view the first extension of six months made by the FBR on 04.12.2019 could only be termed as reasonable, which period was extended looking to the situation prevailing in the country, hence the Department ought to have finalized the pending assessments pertaining to the tax year 2014 by 30.6.2020, which admittedly was not done rather on the very last date when the matter was about to become time barred another six months' time was extended by the FBR which in our view was an abuse of the process of the law and illegal exercise of the authority.

24. In the instant matter, so far as the proceedings under Section 122 of the Ordinance are concerned the same stood expired on 30.6.2019, whereas the proceedings under Section 174 of the Ordinance stood expired on 31.12.2019 however it was agitated by the Department that due to the powers exercised by the



FBR under Section 214A & 214C of the Ordinance the said periods were firstly extended upto 30.6.2020 then due to unavoidable circumstances again extended upto 31.12.2020 however in our view the first extension could be termed as reasonable by looking to the pandemic situation prevailing in the country but the second extension for another six months' time through a letter dated 30.6.2020 on almost some set of facts could neither be considered as reasonable nor in accordance with law.

25. It is also a settled proposition of law that Department has no authority to proceed against a person when the matter is already time barred as after lapse of prescribed time limit matter becomes past and closed transaction (reference may be made to the decision given by the Hon'ble Apex Court in the case of Messrs Rupafil Ltd., supra). It was also held in a number of decisions given by the High Court, including the decision given in the case of Pepsi Cola International (Pvt) Limited and D.G. Khan Cement Co. Ltd., by the Lahore High Court (noted supra) that calling the record after the period of the expiry from a tax payer is not in accordance with law.

26. Hence, in the light what has been observed above, we are of the view that the subsequent extension of the time by the FBR through the letter 30.6.2020 does not fulfill the parameters as enshrined under the law and spelt out under Sections 214A & 214C of the Ordinance and are of the view the Department ought to have finalized the audit proceedings on or before 30.6.2020, which admittedly was not done. Hence, the issuance of notice for the tax year 2014, after the expiry of the prescribed period, in our view is not sustainable under the law hence the same stands vacated with the result that both these petitions stand allowed

alongwith the listed and pending applications, if any. There shall however be no order as to costs.

JUDGE

JUDGE

Karachi  
Dated: 04.01.2023  
SM