

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

ITRA No.82 of 2024
ITRA No.83 of 2024

Date	Order with signature of Judge
------	-------------------------------

ITRA No.82 of 2024

1. For hearing of CMA No.891/2024 (Stay)
2. For hearing of main case

ITRA No.83 of 2024

1. For hearing of CMA No.894/2024 (Stay)
2. For hearing of main case

14.5.2024

Mr. Omer Memon advocate and Mr. Aitzaz Manzoor Memon advocate for the Applicant

Mr. Ameer Bakhsh Metlo advocate files Vakalatnama on behalf of the Respondent-Department, which is taken on record.

Through this Reference Application, the Applicant has impugned order dated 12.1.2024 passed in ITA Nos.3556 and 3557/KB/2023 by the Appellate Tribunal Inland Revenue Karachi proposing various questions of law including the following question, which is relevant for the present purposes: -

Whether the appeals filed by Applicant before Respondent No.3 were barred by time under Section 131 of the 2001 Ordinance?

Heard counsel for the parties and perused the record. At the very outset we have noticed that the impugned order from Para 3 to Para 5 is verbatim same to another order dated 14.9.2023 passed by another Bench of the Tribunal in ITA No.377/KB/2023 in respect of an identical issue that is whether the Appeal filed by the tax-payer was time barred and whether any case for condonation was made out or

not. The said ITA was impugned before us in ITRA No.400 of 2023 and was also fixed today in the earlier part of the day and while setting aside the order of the Tribunal we have observed as follows;

Heard counsel for the parties and perused the record. It is the case of the Applicant that the order of the Commissioner (Appeals) was never received in time, therefore, the Appeal filed before the Tribunal was time barred, but was supported by an application for condonation, which has not been attended to in the impugned order. The impugned order of the Tribunal states that the Applicant has not denied or controverted the service of order through electronic means, whereas, there is no supporting material on record to this effect and when confronted, learned counsel appearing for the concerned Commissioner admitted that insofar as the department is concerned, no objections or comments were filed before the Tribunal. In such event the observation of the Tribunal does not appear to be factually correct and is not supported by the available record.

Secondly, the Tribunal was required to ascertain true facts as to the service of the order or otherwise and only thereafter decide the condonation application in accordance with law. For that it was incumbent upon the Tribunal to call proper comments and supporting documents from the concerned Commissioner as to the passing of the order by the Commissioner (Appeals) and the authorities below. This exercise would have brought clarity in determination of facts as the Tribunal is the highest authority for factual determination in tax matters.¹

In view of such position, we are left with no choice but to set aside the impugned order and remand the matter to the Tribunal to decide the issue of limitation afresh after calling proper comments and supporting documents from the concerned Commissioner. If the condonation application is granted, then the matter shall also be decided on merits as well. Accordingly, the above two question are answered accordingly. Impugned order stands set aside and the matter stands remanded as above. Let copy of this order be issued to the Tribunal in terms of Section 133(5) of the Income Tax Ordinance, 2001.

In the impugned order of the Tribunal (which incidentally is subsequent to the order in ITA No377/KB/2023) identical words and facts have been recorded, including the observation that “the Applicant has not denied or controverted the service of order through electronic means” and therefore, we are constrained to observe that such act of the Division Bench of the Tribunal not only appears to be very casual; but so also depicts negligence in attending to the facts of a particular case. We sincerely believe that it is not an outcome of

¹ Commissioner Inland Revenue v RYK Mills Lahore; (SC citation- 2023 SCP 226); Also see Commissioner Inland Revenue v. Sargodha Spinning Mills, (2022 SCMR 1082); Commissioner Inland Revenue v. MCB Bank Limited, (2021 PTD 1367); Wateen Telecom Limited v Commissioner Inland Revenue (2015 PTD 936)

engaging some *Artificial Intelligence* (“AI”) as otherwise there will be a serious question mark as to the accuracy as well as authenticity of such AI judgments, of which lately, there is so much of discussion all around. This appears to be more of an unnecessarily hurried “cut and paste” approach. Earlier in somewhat similar facts pertaining to the conduct of Customs Appellate Tribunal this Court vide its order dated 28.11.2023 passed in SCRA No. 1234 & 1235 of 2023 had observed as under:

Today, the learned Chairman of the Customs Appellate Tribunal is in attendance and has filed a statement along with various documents including orders / notifications and submits that insofar as the orders in question are concerned, being Chairman of the Tribunal, he has no control on such conduct of the Members of the Tribunal who are passing orders on the judicial side independently and he cannot interfere; nor monitor the orders so passed by the respective Judicial and Technical Members of the Benches at Karachi. To that extent, we agree and are also of the view that the Chairman cannot interfere in the independent exercise of powers by the respective Members. However, there has to be some monitoring and case management on the administrative side by his office so that some uniformity is achieved by the Members of the Tribunal in dealing with similar or identical matters. ***It is a matter of record that the order impugned in these Reference Applications is in respect of Valuation Ruling bearing No. 1681/2022 dated 22.07.2022, whereas, in another set of Appeals which came before us in SCRA No. 1193/2023 (The Director General Customs Valuation v. Prime Trading) and other connected matters the same Valuation Ruling was impugned and though two different Benches had dealt with the same Valuation Ruling; but an identical verbatim order has been passed, as if the said order has been passed by the same Member. In fact, in reality it is not so. It does not appeal to a prudent mind that two different Members of the Tribunal, though dealing with same Valuation Ruling can pass a verbatim same order, and also commit the same mistake on facts in the same Para 10 & 11 as had been done by the earlier bench.***

In view of the above facts we do not see any reason to sustain the impugned order, whereas, today in the earlier part of the day we have already set-aside the order on the basis of which the impugned order in question has been passed, therefore, the impugned order stands set aside and the matter stands remanded to the Tribunal to decide the issue of limitation afresh after calling proper comments and supporting documents from the concerned Commissioner. If the condonation application is granted, then the matter shall also be decided on merits as well. The above question is answered accordingly. Let copy of this order be issued to

the Tribunal in terms of Section 133(5) of the Income Tax Ordinance, 2001. Office to place a copy of this order in the connected matter.

Office is further directed to issue copy of this order to the Ministry of Law and Justice for necessary action on their part, if any, whereas, a copy may also be placed before the Inspecting Judge, of this Court nominated for Inland Revenue Tribunal by the Hon'ble Chief Justice for action, if any.

JUDGE

JUDGE

Zahid*