

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

ITRA No.400 of 2023

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Date	Order with signature of Judge
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1. For order on office objection No.25
2. For hearing of CMA No.617/2023 (Stay)
3. For hearing of main case

**14.5.2024**

Mr. Omer Memon advocate and Mr. Aitzaz Manzoor Memon  
advocate for the Applicant  
Syed Ahsan Ali Shah advocate for the Respondent-Department  
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Through this Reference Application, the Applicant has impugned order dated 14.9.2023 passed in ITA No.377/KB/2023 by the Appellate Tribunal Inland Revenue Karachi proposing various questions of law including the following two questions, which are relevant for the present purposes: -

- i) *Whether the Tribunal Appeal filed by Applicant before Respondent No.4 was barred by time under Section 131 of the 2001 Ordinance?*
- ii) *Whether the Order-in-Appeal dated 31.03.2022 (bearing Order No.114/2022-23) passed by Respondent No.3 issued and served in accordance with Section 129 read with 218 of the 2001 Ordinance? If not, does the Impugned Order dated 14.09.2023 passed by Respondent No.4 suffer from factual misreading and error floating on the face of the record?*

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.<sup>1</sup>

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.

JUDGE

JUDGE

Zahid/\*

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<sup>1</sup> 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)