

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

ITRA Nos.19 to 22 of 2022

<u>Date</u>	<u>Order with signature of Judge</u>
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Fresh Case

1. For orders on office objections
2. For orders on CMA No.189/2024
3. For orders on CMA No.253/2024
4. For order on CMA No.329/2020
5. For hearing of main case

12.8.2024

Mr. Zohaib Hassan Abro, Advocate for Applicants

1 to 5. These Reference Applications impugn a common order dated 30.11.2023 passed by the Appellate Tribunal Inland Revenue, Karachi, whereby the Appeals filed by the Applicant for tax years 2016-2019 have been dismissed as being time barred. Learned Counsel for the Applicant has been time and again been confronted as to on what exact date the order of Commissioner (Appeals) came into the knowledge of the Applicant and despite several chances, no definite date has been disclosed to this Court. It is a matter of record that the Appeal of the Applicant before the Tribunal was barred by 1064 days and the case of the Applicant is that Commissioner Appeals' order came to their knowledge when a notice under section 138 of the Income Tax Ordinance, 2001, was received on 19.05.2023; however, in the condonation application before the Tribunal no such thing was disclosed and instead it was stated that the order of Commissioner Appeals dated 20.09.2020 was received on 27.09.2023. Similarly, it is the Applicants own case that a certified copy was applied for on 26.09.2023. If that be the case, then why it took so long for the Applicant to apply for the certified copy from the date of notice under Section 138 ibid. It does not appeal to a prudent mind to comprehend the different dates being relied upon by the Applicants Counsel as to the actual notice or awareness of the order of Commissioner Appeals. Besides this, it was also incumbent upon the Applicant

to pursue its case before the Commissioner Appeals if the order was not received within a reasonable time.

Notwithstanding the shortcomings as above, we have on our own and in the interest of justice, examined the record to see that whether any case for indulgence is otherwise made out, and to our utter surprise and dismay, it reflects that the Applicant has been too negligent in pursuing its case before the lower forums including the Commissioner (Appeals). It would be advantageous to refer to the relevant findings in the said order which reads as under;

“At the outset, it is noticed that the appellant failed to fulfill the procedural requirements for filing of appeal as prescribed in Rule 76B of the I.T. Rules, 2002 as enacted in the Rules through SRO 279(I)/2018 dated 5.3.2018 which are summarized below for ready reference: -

76B. Documents to accompany Appeal:- (1) Every memorandum of appeal shall be accompanied with the following documents along with checklist specifying the documents attached with the memorandum in duplicate (one of which shall be a certified copy), namely:-

- (a) the order appealed against;
- (b) notice of demand;
- (c) proof of payment of appeal fee;
- (d) a certificate showing the date of service of notice of demand or the impugned order to the appellant; and
- (e) a certificate showing the date of communication of the memorandum of appeal and grounds of appeal to the respondent department.

(2) The appellant shall annex an index on the face of memorandum of appeal, showing the documents filed under this rule along with paging in paper book form in duplicate.

The appellant has only attached copies of CPRs regarding payment of appeal fee for these years which are examined and it is noticed that the same are reflecting tax year as 2021 instead of 2016 to 2019. Thus mandatory condition for payment appeal fee for the respective tax period has also not been fulfilled.

Looking to the appellant's failure to fulfill the conditions as laid down in Rule 76B of the I.T. Rules, 2002 referred, above and with special reference to the fact that even the grounds of appeal were not filed, the subject appeals are liable to be dismissed being filed without fulfilling the procedural and legal requirements.

Apart from the above, it is also observed that Vakalatnama attached with the appeal papers in favour of Mr. Imran Ali Abro, Advocate are neither signed by the appellant nor by the advocate himself.

From the above discussed facts of the case, it is quite apparent & evident that appeals filed by the appellant are neither entertainable nor liable to be adjudicated on the facts of the case as discussed supra and liable to be dismissed, but, in the interest of natural justice & fair play, an opportunity of being heard was provided to the appellant to fulfill the shortcomings vide

letter # 917 dated 1.9.2020 which were sent to the AR's two addresses available on record but both of them were returned back being undelivered and the same is a valid and legitimate service.

Considering the whole scenario of the case, as enumerated above, filing of appeals without fulfilling the legal and procedural requirements are hereby DISMISSED.”

From perusal of the above it can be seen that the Applicant had failed to deposit the requisite fee; did not file any supporting or minimum required documents to support the grounds of Appeal; the Vakalatnama was never signed by the Applicant nor by the Counsel; the address provided for service was incorrect / incomplete; and so on and so forth. It is also a matter of record that the Commissioner did try to send a final hearing notice to the Applicant but was returned unserved due to an incorrect address. Such conduct of the Applicant does not help its case when seeking condonation of such a long delay. In these facts and circumstances, no case of any indulgence is otherwise made out the as learned Tribunal was fully justified in dismissing the Appeals of the Applicant as being hopelessly time barred.

We may also observe that if a forum which is competent and has the authority to condone a delay in filing of an appeal, exercises its jurisdiction and refuses to condone the same, then it is not open to the higher forum to exercise the same discretion on its own without pointing out any infirmity or illegality in refusal of condonation of delay. The power to condone the delay and grant an extension of time under section 5 of the Limitation Act, 1908 is discretionary¹. The law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth, a legal action at his own whim and desire². It may be relevant to

¹ Dr. Syed Sibtain Raza Naqvi v. Hydrocarbon Development (2012 SCMR 377)

² Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad (PLD 2015 SC 212),

mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law"³. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent⁴. the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right⁵. It is settled law that that limitation is not a mere technicality, and where the limitation period has expired, a right accrues in favour of the other side which cannot be lightly brushed aside⁶.

Accordingly, proposed questions of law are answered against the Applicant; hence, all listed Reference Applications are hereby dismissed in limine with pending applications.

JUDGE

JUDGE

Shakeel, PS.

³ 2023 SCMR 1665 (Mst. Musrat Parveen v. Muhammad Yousaf)

⁴ Muhammad Iftikhar Abbasi v. Mst. Naheed Begum and others (2022 SCMR 1074)

⁵ Khudadad v. Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others (2022 SCMR 933)

⁶ PLD 2023 Supreme Court 482 (Messrs Paki Suzuki Motors Company Limited through Manager v. Faisal Jamel Butt and another)