

IN THE HIGH COURT OF SINDH, KARACHI
Special Sindh Sales Tax Reference Application Nos. 91 & 92 of 2021

Date

Order with signature of Judge

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman

Applicants in both SSTRAs : **Sindh Revenue Board AND Commissioner Appeals-II, SRB**
Through Mr. Malik Naeem Iqbal, Advocate along with Ms. Sumiya Kalwar, Advocate.

Respondent No.2 in both SSTRAs : **M/s. Ali Transport Service**
Through Mr. Abdul Basit Rasheed, Advocate.

Date of Hearing : **27.08.2024**

Date of Judgment : **23.09.2024**

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through these Special Sindh Sales Tax Reference Applications filed under Section 63 of the Sindh Sales Tax on Services Act, 2011, ("**2011 Act**") the Applicants (Sindh Revenue Board & Commissioner Appeals) have impugned order dated 01.04.2021 passed by the Appellate Tribunal, Sindh Revenue Board, Karachi in Appeal No.AT-19 of 2021 (arising out of Appeal No.255/2019) proposing various questions of law, however, this Court on 06.01.2022 had considered only two questions of law while issuing notice to the respondents. The said questions of law reads as under: -

1. *Whether, the Learned Tribunal erred to hold in the given position and scheme of section 59(5), (6) and (7) of the Act, 2011 that Commissioner (Appeals) SRB has to transfer the undecided Appeal to the Appellate Tribunal within 180 days from date of filing of appeal (120+60 days statutory time allowed to Commissioner (Appeals) to decide an appeal)/*
2. *Whether, the Learned Tribunal erred to decline such transfer of the appeal-case to it, against the provisions of section 59, after expiry of the statutory period of 180 days by abating the proceedings in toto and discharging the Registered Person from payment of the amounts involved by way of allowing the appeal in favour of Registered person on a mere assumptive technicality?*

2. Learned counsel for the Applicant has contended that the learned Tribunal was not justified in holding that since the Commissioner (Appeals) had transferred the Appeal to the Tribunal in terms of Section 59(7) of the Act after expiry of the stipulated period of 180 days; hence the Appeal stands abated, and the relief as prayed by the Respondent stands allowed. According to him, the Commissioner (Appeals) was required to decide the Appeal within a period of 120 days, which can then be extended for a further period of 60 days, and if the Appeal is not decided in the period so provided, then he has to transfer the undecided Appeal to the Tribunal, whereas, upon transfer of appeal it has to be decided by the Tribunal and cannot abate for the reasons, as noted by the Tribunal. Per learned counsel, it is immaterial that the period so provided under Section 59(7), *ibid*, had expired as it is only after expiry of such period that the Commissioner (Appeals) can transfer the Appeal to the Tribunal, as he cannot do so before such expiry as held by the Tribunal. He has prayed for an affirmative answer to the above questions in favour of the Applicant Department.

3. On the other hand, learned Counsel appearing on behalf of the Respondent has supported the impugned order and has prayed for dismissal of these Reference Applications.

4. Heard both the learned counsel for the parties and perused the record. It appears that respondent No.2 was issued a Show Cause Notice for compulsory Registration under Section 24 of the 2011 Act on the ground that intercity transportation or carriage of goods by road was a service as defined under the 2011 Act; hence he was liable to be compulsorily registered. The said Show Cause Notice was adjudicated vide order dated 02.07.2019, whereby, not only the respondent No.2 was registered compulsorily, but a penalty of Rs.100,000/- was also imposed under Serial No.1 of the Table to Section 43, read with Section 24B of the 2011 Act. The said order was impugned by

Respondent No.2 before the Commissioner (Appeals), wherein, the matter was kept pending for several reasons, including Covid-19 as well as adjournments by the Applicant / Respondent and was finally transferred to the Tribunal in terms of Section 59(7) of the Act. However, the Tribunal while deciding the Appeal concluded that the Appeal was transferred by the Commissioner (Appeals) after 180 (120+60) days, whereas it ought to have been transferred before expiry of 180 days and as a result thereof, as per Tribunal's order the Appeal stands abated, whereas the relief stood allowed as prayed by the taxpayer. It would be advantageous to refer to the relevant findings of the Tribunal, which reads as under: -

“7. Sub-section (7) of section 59 of the Act provides as under:-

(7) Where the Commissioner (Appeals) has not made an order under sub-section (1) before the expiration of the period prescribed under sub-section (5), read with sub-section (6), the Commissioner (Appeals) shall transfer the undecided appeal to the Appellate Tribunal which shall decide the undecided appeal as if it has been filed against the order of the Commissioner (Appeals):

Provided that while transferring the un-decided appeal to the Appellate Tribunal, the Commissioner (Appeals) shall give due intimation, in this regard, to the appellant and his agent or authorized representative and also to the Chairman of the Board.

It is evident from the bare reading of the above provision that in case the Commissioner (Appeals) has not made an order under sub-section (1) of the Act before the expiration of the period prescribed under sub-section (5), read with sub-section (6), he shall transfer the undecided appeal to the Appellate Tribunal. The appeal has to be decided or transferred to the Tribunal within total 180 days (120+60 days).

8.

9. *In view of above case laws it appears that the extension order could be passed before expiry of original 120 days or at the best before the expiry of subsequent 60 days. In the instant case no order of extension of time was passed. Similarly the decision of transferring the appeal to the Tribunal has to be taken before expiry of original 120 days or before the expiry of subsequent 60 days if the time was extended. Whereas in the instant case the decision for*

transferring of the appeal to the Tribunal was taken on 18.03.2021. However as per the version of Commissioner (Appeals) 120 days had expired on 07.12.2020, whereas as per our calculation as mentioned supra the time had expired on 30.03.2020 much before the decision was taken to transfer the Sindh appeal to the Tribunal.

10. *In our opinion after the expiry of total 180 days (120+60) the (Appeals) become functus officio and could not pass any order either under sub-section (5) of Section 59 (extension of 60 days) of the Act or under sub-section (7) of Section 59 (transferring the Appeal to Tribunal) of the Act. Since the Commissioner (Appeals) has retained the appeal beyond the statutory period under which he could pass an order the appeal stands abated and the relief is allowed to the tax payer. However in view of above legal position no further order could be passed by this Tribunal.*

11. *It may be pointed out further that we are not satisfied with the manner of maintenance of files by Assistant Commissioners and Commissioner (Appeals). On examination of such files we have noticed that Note Sheets are not maintained properly, and were either missing or the same were not signed by the Officers. Thus, in absence of Note Sheets the adjournments were incorrectly attributed towards the tax payer, and such practice is not acceptable. Similarly in absence of any signature of officer on the Note Sheet the adjournment could not be attributed towards the tax payer. We have also noticed that the Officers generally misreport the adjournments sought by the tax payers, while passing OIO or OIA and this practice on the part of the Officers of SRB is illegal, malafide and inappropriate and action is required to be taken against those Officers who bring bad name to the SRB and also caused loss to exchequer.*

12. *It has further been noticed that the orders passed by officer of SRB are mostly whimsical and are not based on proper appreciation / interpretation of facts and law. Therefore in our opinion it would be appropriate that the Board should issue necessary instructions including framing of the Rules for conducting the adjudication as well as the appeal proceedings.”*

5. From perusal of the aforesaid findings of the Tribunal, it appears that the Tribunal has arrived at a conclusion that firstly, the order for transfer of Appeal to the Tribunal must be made by the Commissioner (Appeals) before the expiration of the stipulated period of a maximum of 180 days in this case. The second finding of the Tribunal is that after expiry of 180 days' period, the Commissioner (Appeals) become *functus officio* and could not pass any order either under subsection (5) of Section 59

of the 2011 Act, or under subsection (7) of Section 59, *ibid* and since in the instant matter, he has admittedly retained the Appeal after the statutory period under which he could pass an order, the Appeal stands abated and the relief stands allowed to the taxpayer. It has been further held by the Tribunal that in view of the above legal position, no further order could be passed by the Tribunal including a decision on merits of the case.

6. The procedure for deciding an Appeal by the Commissioner (Appeals) under the 2011 Act in question has been provided in Section 59, which reads as under: -

“59. Decision in appeal.--(1) *In disposing of an appeal lodged under section 57, the Commissioner (Appeals) SRB may pass such order as he thinks fit, confirming, varying, altering, setting aside or annulling the decision or order appealed against.*

(2) *In deciding an appeal, the Commissioner (Appeals) SRB may make such further inquiry as may be necessary provided that he shall not remand the case for denovo consideration.*

(3) *The Commissioner (Appeals) SRB shall not increase the amount of any tax payable by the appellant unless the appellant has been given an opportunity of showing cause against such increase.*

(4) *As soon as practicable after deciding an appeal, the Commissioner (Appeals) SRB shall serve his order on the appellant and the officer of the SRB who made the order appealed against.*

(5) *An order passed by the Commissioner (Appeals) SRB under sub-section [(1)] shall be passed not later than one hundred and twenty days from the date of filing of appeal or within such extended period, not exceeding sixty days, as the Commissioner (Appeals) SRB may, for reasons to be recorded in writing fix.*

(6) *In computing the aforesaid time period, any period during which the proceedings are adjourned on account of a stay order or proceedings under section 65 or the time taken through adjournment by the appellant [*] shall be excluded.*

[(7) *Where the Commissioner (Appeals) has not made an order under sub-section (1) before the expiration of the period prescribed under sub-section (5), read with sub-section (6), the Commissioner (Appeals) shall transfer the undecided appeal to the Appellate Tribunal which shall decide the undecided appeal as if it has been filed against the order of the Commissioner (Appeals):*

Provided that while transferring the un-decided appeal to the Appellate Tribunal, the Commissioner (Appeals) shall give due intimation, in this regard, to the appellant and his agent or authorized representative and also to the Chairman of the Board.

(8) While transferring the undecided appeal to the Appellate Tribunal, the Commissioner (Appeals) shall attach a report explaining the circumstances and reasons due to which the appeal could not be decided within the prescribed time.]”

7. From perusal of the aforesaid provisions, including sub-section (5) and sub-section (6), it reflects that the Commissioner (Appeals) has to pass an order not later than one hundred and twenty¹ days from the date of filing of Appeal or within such extended period, not exceeding sixty days, as the Commissioner (Appeals) may, for reasons to be recorded in writing fix. Sub-section (6) further provides that in computing the aforesaid time, any period during which the proceedings are adjourned on account of a stay order or proceedings under section 65 or the time taken through adjournment(s) by the appellant shall be excluded. Finally, sub-section (7) provides that where the Commissioner (Appeals) has not made an order under sub-section (1) before the expiration of the period prescribed under sub-section (5), read with sub-section (6), the Commissioner (Appeals) shall transfer the undecided Appeal to the Appellate Tribunal which shall decide the undecided Appeal as if it has been filed against the order of the Commissioner (Appeals). Proviso to sub-section (7) *ibid* provides that while transferring the undecided Appeal to the Tribunal, the Commissioner (Appeals) shall give due intimation to the Appellant and other concerned person. The issue in hand has two parts. Firstly, whether the Commissioner (Appeals) has decided the matter within the stipulated period or not? The second aspect is that as to when the Appeal could be transmitted to the Tribunal i.e. before expiry of the stipulated period; or whether he has the jurisdiction to do so after the period has expired. It does not appear to be in dispute that the Appeal in

¹ (now eighty days) pursuant to Sindh Sales Tax on Services (amendment) Act, 2021 assented on 8.3.2021

question was not decided by the Commissioner (Appeals) within the prescribed period. Then are there any consequences for not doing so? Insofar as deciding an Appeal within the stipulated time period is concerned, a two member Bench of the Hon'ble Supreme Court of Pakistan in **Sarwaq Traders**² relating to the Sales Tax Act, 1990 while interpreting an analogous provision i.e. Section 45-B(2)³ of the said Act came to the conclusion that such time period is mandatory even at the Appellate stage as has been held in various cases⁴ in respect of time period being mandatory at the original proceedings i.e. before the Adjudicating Authority. The relevant findings in the said case read as under: -

“4.

In terms of this Section, when an appeal is filed, the Commissioner (Appeals) on hearing both the parties has to pass an order with respect to the appeal pending before him. In terms of the first proviso, the Commissioner (Appeals) is mandated to pass the order not later than 120 days from the date of filing of the appeal. In the event that the case cannot be decided in 120 days, section 45-B(2) of the Act gives the Commissioner (Appeals), the authority to extend the 120 days by 60 days, if required, provided that the Commissioner (Appeals) records the reasons, in writing as to why the period of 120 days is being extended. However, the Second Proviso clarifies that such extended period shall, in no case, exceed 60 days. This means that the total period within which the appeal must be decided is 180 days as by using the words in no case the legislature has limited or restricted the discretion of the Commissioner (Appeals) rendering its compliance mandatory. Accordingly, the intent of the legislature can be seen from the clear use of the language of section 45-B(2) of the Act, where the Commissioner (Appeals) may decide the appeal within 120 days, giving the Commissioner the discretion to decide the case within the given time or to extend the time by justifying the reasons for extension in time. However, the section mandates that the Commissioner (Appeals) shall extend the time no more than 60 days, meaning that a total of no more than 180 days can be consumed to decide an appeal. Consequently, the legislature has prescribed a clear time frame of 180 days for deciding the appeal, by using negative and restrictive language.

² Commissioner Inland Revenue, Zone-II, v. Messrs Sarwaq Traders [2022 SCMR 1333]

³ Provided that such order shall be passed not later than one hundred and twenty] days from the date of filing of appeal or within such extended period as the [Commissioner] (Appeals) may, for reasons to be recorded in writing fix:

Provided further that such extended period shall, in no case, exceed [sixty] days;

⁴ *Mujahid Soap and Chemical Industries (Pvt.) Limited v. Customs Appellate Tribunal*(2019 SCMR 1735) & *Super Asia Mohammad Din and Sons and others* (2017 SCMR 1427)

5. The rationale, as we understand, for prescribing a time frame is to ensure that tax matters be resolved at the earliest, within the relevant tax year, so that the taxpayer satisfies its liability and the Department is able to collect revenue, within the relevant tax year. This is important because taxes pay for public goods and services and is one of the main sources of revenue for the State. Consequently, the intent of the legislature is to obligate the Commissioner (Appeals) to decide the appeal within 180 days. The question is whether this obligation is mandatory or is it directory. We find that its mandatory as the first time frame given under section 45-B(2) is 120 days, which is extendable, meaning that, the Commissioner can exercise discretion and extend the time where required. The only caveat is that reasons have to be given in writing, so that the discretion is not misused and is not exercised arbitrarily. The second time frame under section 45-B(2) is for extending 120 days by 60 days and nothing beyond 60 days. With the help of negative language, the legislature has created an obligation on the Commissioner (Appeals) to decide the appeal in a total of 180 days where the appeal is not decided within 120 days. This obligation renders the section mandatory as the Commissioner (Appeals) cannot go beyond 180 days, as the Commissioner's discretion is curtailed if the time needs to be extended beyond 120 days. Consequently, the obligation fixed on the Commissioner (Appeals) to decide the matter within 180 days is mandatory and not directory.

6. Now, the question is what happens if the Commissioner (Appeals) does not decide the matter within the 180 days. To our mind, since this is a mandatory provision, if a decision is made beyond the 180 days as prescribed under section 45-B(2) of the Act, then such a decision made beyond the prescribed period is an invalid decision. This is because the statute requires the appeal to be decided within 180 days, hence, it has to be decided in the prescribed period. A similar view has already been taken in the case of *Messrs Mujahid Soap and Chemical Industries (Pvt.) Limited v. Customs Appellate Tribunal, Bench-I, Islamabad and others* (2019 SCMR 1735) where the provision under consideration was Section 179 of the Customs Act, 1969, which is *pari materia* to the provisions under consideration under the Act, which reads as follows:

"S. 179(3) The cases shall be decided within one hundred and twenty days of the issuance of show cause notice or within such period extended by the Collector for which reasons shall be recorded in writing, but such extended period shall in no case exceed sixty days."

This Court concluded that the understanding of law is for the taxing authority to decide the matter within the prescribed 180 days. In another case, reported as *The Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others* (2017 SCMR 1427), this Court has held that the ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. The Court found that while the use of the word 'shall' is not the sole factor which determines mandatory or directory nature of a provision, it is certainly one of the indicators of legislative intent. Other factors include the presence of penal

consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. The Court concluded that it is the duty of the Court to garner the real intent of the legislature as expressed in the law itself.”

8. Thereafter, a three-member bench of the Hon’ble Supreme Court of Pakistan in the case of **A.J. Traders**⁵ had the occasion to examine somewhat similar provisions under the Customs Act, 1969 in respect of deciding the Appeals by the Customs Appellate Tribunal within the period so stipulated in Section 194-B(1) of the Customs Act, 1969. The Hon’ble Supreme Court in **A.J. Traders** (Supra) also considered the case of **Sarwaq Traders** (supra) and observed that *“we with greatest of respect, cannot bring ourselves to agree therewith to the extent that the said decision contradicts with what has been held in the cited precedents by us. It was further observed that we also cannot, with profound respect, accept the stated rationale for prescribing a time frame which, to use the words of the learned judges is, ‘that the taxpayer satisfied its liability, and the Department is able to collect revenue’.* The precise reason for such disagreement was that if a taxpayer’s appeal is not decided within the stipulated period, a taxpayer cannot be non-suited, whereas, to hold otherwise, would be unfair and give the State a premium for its own functionary’s non-compliance. The relevant finding of the Hon’ble Supreme Court is as under: -

“4. Our attention has been drawn to a recent decision by a two-member Bench of this Court⁶ which had interpreted a similar provision of the Sales Tax Act, 1990 and held that the same was 'mandatory and if [the appeal is] decided beyond the given time ... makes the order void.' It would be appropriate to reproduce the reasoning which had prevailed with the learned judges in coming to this conclusion:

'The rationale, as we understand, for prescribing a time frame is to ensure that tax matters be resolved at the earliest, within the relevant tax year, so that the taxpayer satisfies its liability and the Department is able to collect revenue, within the relevant tax year. This is important because taxes pay for public goods and services and is one of the main sources of revenue for the State. Consequently, the intent of the legislature is to obligate the Commissioner (Appeals) to decide

⁵ Messrs A.J. Traders through Proprietor v. Collector of Customs (Adjudication), Islamabad and others [PLD 2022 SUPREME COURT 817]

⁶ Sarwaq Traders (Supra)

the appeal within 180 days. The question is whether this obligation is mandatory or is it directory. We find that its mandatory as the first time frame given under section 45-B(2) is 120 days, which is extendable, meaning that, the Commissioner can exercise discretion and extend the time where required. The only caveat is that reasons have to be given in writing, so that the discretion is not misused and is not exercised arbitrarily. The second time frame under section 45-B(2) is for extending 120 days by 60 days and nothing beyond 60 days. With the help of negative language, the legislature has created an obligation on the Commissioner (Appeals) to decide the appeal in a total of 180 days where the appeal is not decided within 120 days. This obligation renders the section mandatory as the Commissioner (Appeals) cannot go beyond 180 days, as the Commissioner's discretion is curtailed if the time needs to be extended beyond 120 days. Consequently, the obligation fixed on the Commissioner (Appeals) to decide the matter within 180 days is mandatory and not directory.'

5.

6. The questions requiring consideration are whether the statutory requirement to decide an appeal, and to do so within a particular time frame, is a mandatory obligation cast on a State functionary and whether non-compliance therewith adversely affects the rights of the taxpayer. In the case of *Collector of Sales Tax v. Super Asia Mohammad Din & Sons* the following test, with which we are in agreement with, was prescribed:

'6. The ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. While the use of the word 'shall' is not the sole factor which determines the mandatory or directory nature of a provision, it is certainly one of the indicators of legislative intent. Other factors include the presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. It is the duty of the Court to garner the real intent of the legislature as expressed in the law itself.'

Significantly, the consequences for not deciding the appeal within the prescribed time is not provided in the Customs Act, 1969.

7. In the case of *WAK Limited v Collector Central Excise and Sales Tax* this Court was of the opinion that the proviso to section 36(3) of the Sales Tax Act, 1990 'cannot be construed as mandatory on any account and by any attribute'. However, since their lordships had taken issue with the determination arrived at in the *Super Asia* case the constitution of a larger bench was sought. It transpires that though a larger Bench was constituted but due to the retirement of three Hon'ble Judges of this Court the matter could not be decided. However, for our purposes it is immaterial what the larger Bench, if and when it is reconstituted, decides since the time tested and repeatedly applied test (reproduced above) prescribed in the case of

Super Asia, was not disagreed with by their lordships in the case of WAK Limited.

8. *If a taxpayer's appeal is not decided within the stipulated period his appeal cannot be negated and the taxpayer non-suited on this score. To hold otherwise would be eminently unfair and give the State a premium for its own functionary's non-compliance with the law. Article 4 of the Constitution of the Islamic Republic of Pakistan ('the Constitution') accords the protection of law and to be treated in accordance with law to be the inalienable right of every citizen and also of every other person for the time being in Pakistan. The right to be dealt with in accordance with the law is further fortified by Article 10A of the Constitution which stipulates a fair trial and due process as a Fundamental Right. These rights cannot be negated or diluted by statute, and if any law purports to do so it shall to such extent be void, as stipulated in Article 8(1) and (2) of the Constitution. Therefore, it cannot be stated that an order belatedly passed on a taxpayer's appeal is a void order and/or a nullity.*

9. *In the case of Mujahid Soap and Chemical Industries (Pvt.) Ltd v. Customs Appellate Tribunal section 179 of the Customs Act, 1969, which attends to initial adjudication, and not an appeal, was considered and this Court concluded that since adjudication 'was beyond time as prescribed in section 179(3) of the Act. Therefore, the said decision is invalid. The material distinguishing point in this case was that the initial adjudication with regard to the show cause notice was delayed. In other words the State's functionary, that is, the Deputy Collector (Adjudication), had delayed in deciding the show cause notice. Belatedly adjudicating a show cause notice is not the same as belatedly deciding an appeal preferred against a purported liability, because then the appellate authority's tardiness, whether intentional or otherwise, will frustrate the taxpayer's appeal, which is not the intention of the law, nor could it be as it would violate Articles 4 and 10A of the Constitution.*

10. *That as regards the view expressed in the **Sarwaq Traders** case by a two-member Bench we, with the greatest of respect, cannot bring ourselves to agree therewith to the extent that the said decision contradicts with what has been held in the cited precedents and by us. We also cannot, with profound respect, accept the stated rationale for prescribing a time frame which, to use the words of the learned judges is, **'that the taxpayer satisfies its liability, and the Department is able to collect revenue'**. This rationale effectively presupposes that the taxpayer is liable which, in our humble opinion, is not what the statute says nor what can be implied therefrom. The Legislature in prescribing a period within which an appeal should, or must, be decided obligates the appellate authority. Therefore, if there are any consequences in deciding an appeal beyond the prescribed period the same may only be visited upon the State functionaries, and not on an appellant taxpayer."*

9. From perusal of the aforesaid findings of the three member bench of the Hon'ble Supreme Court in the case of **A.J. Traders** (supra), it is clear that insofar as the Appellate proceedings are concerned, the principle is that the period provided for deciding an Appeal within a stipulated time is not mandatory; as has been held in **Mujahid Soap** and **Super Asia** (Supra) in respect of the time period provided for deciding the original proceedings or the proceedings before the Adjudicating Authority arising out of a Show Cause. Therefore, it can be safely held insofar as the case in hand is concerned, even if the Appeal was not decided within the maximum period of 180 days; neither the Appeal abates; nor it can be held that by efflux of time, it stands allowed as prayed. Hence, the finding of the Tribunal to this effect cannot be sustained.

10. Coming to the second issue that the Commissioner (Appeals) is required to transfer the undecided Appeal before expiry of the period of 180 days, and not thereafter, as he becomes *functus-officio* after expiry of such period, again with respect to the learned members of the Tribunal, we are not in agreement with the findings so recorded by the Tribunal. Though sub-section (7) of Section 59 of the 2011 Act, provides that where the Commissioner (Appeals) has not made an order under sub-section (1) before the expiration of the stipulated period, he shall transfer the "**undecided**" Appeal to the Appellate Tribunal, whereas the proviso to sub-section (7) of Section 59 *ibid*, also refers to transfer of the "**undecided**" Appeal to the Tribunal. However, in our considered view, this can only be done when the Appeal remains "**undecided**" till the expiry of the period as it cannot be transferred to the Tribunal if the stipulated period has not expired. In fact, before this period expires, the Commissioner (Appeals) can still decide the Appeal, even on the last day. Therefore, if a contrary view is taken, then the Commissioner (Appeals) will be at liberty to transfer Appeals at any moment of

time as it will still be before the expiration of the maximum period. The strict view of the Tribunal will require that all such Appeals are transferred just one day before the expiry of the stipulated period, which at times, for numerous reasons will not be a possibility, coupled with the fact that the Tribunal was of the view that such transferred Appeals abates and allowed as prayed. We are of the firm view that this can't be the intention of the legislature. To us, it is immaterial that as to how much period has lapsed before the Appeal is transferred, as no benefit can be claimed by a taxpayer in such a situation as held by the Supreme Court in the case of **A.J Traders** (Supra). At the same time, we cannot approve the finding of the learned Tribunal that the Appeal abates or is deemed to have been allowed if such period has already expired before its transfer. Once the law provides that an undecided transferred Appeal must be decided on merits as if the same has been dismissed by affirming the Order in Original, then the Tribunal has no choice but to decide the same on merits in accordance with law. There are no other options available for the Tribunal as it might result in non-suiting any of the parties before it.

11. In view of hereinabove facts and circumstances of these case, it appears that the Tribunal has erred in passing the impugned order and has failed to appreciate the law correctly, including interpretation of Section 59(7) of the 2011 Act and, therefore, both the above questions are answered in the "**affirmative**": in favour of the Applicant and against the Respondent No.2. Consequently, these Reference Applications are **allowed** and the impugned order(s) stand **set aside**. The matter shall be deemed to be pending before the Tribunal, who shall decide the Appeal on merits in accordance with law, after providing an opportunity of hearing to all concerned. Let copy of this order be issued to the Appellate Tribunal, Sindh Revenue Board in terms of Section 63(5) of the 2011 Act.

Dated: 23.09.2024

J U D G E

J U D G E

Farhan/PS