

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

ITRA 111 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of main case

12.05.2026

Mr. Qaim Ali Memon, advocate for the applicant

This matter is pending since 2015 without any progress. The impugned order inter alia records as follows:

18. Admittedly in the instant case, the Return of Income was filed on 25-09-2008. Keeping in view the provision of Sub-Section (2) or (4) of the Ordinance and ratio of judgments of the Honourable Supreme Court of Pakistan in the Civil Petition No.306 of 2014 and the Honourable Lahore High Court in the case reported as [(2014) 110 TAX 298 (H.C. Lah.), the original or amended assessment order under Section 122 could be amended up to 25-09-2013; whereas, the order under Section 122(5A)/122(9) of the Ordinance has been passed on 30-06-2014, which is barred by time by almost nine months.
19. On the conclusion of first hearing of this case on 1gth December, 2014, this Bench directed the learned DR to provide comments (counter-reply) in writing by 10th of January, 2015 regarding consequential effects on the present case due to the judgments of Honourable Supreme Court of Pakistan and the Honourable Lahore High Court quoted supra. Following is the relevant extract of reply filed by the author of the order submitted on 04-03-2015.
 5. That the proceedings u/s 122(5A) of the Ordinance were not barred by time limitation, in terms of the provisions of section 122(4)(a) of the Ordinance. The relevant portion of the provisions of section 122(4)(a) of Ordinance are hereby reproduced for ready reference:
 - "4) where an assessment order (hereinafter referred to as the original assessment") has been amended under sub section (1), (3) or (5A) the Commissioner may further amend (as many times as may be necessary) the original assessment within the later of -
 - (a) Five years (from the end of financial year in which) the Commissioner has issued or is treated as having issued or is treated as having issued the original assessment order to the taxpayer; or
 - (b) One year (from the end of financial year in which) the Commissioner has issued or is treated as having issued the amended assessment order to the taxpayer."
20. The learned DR reiterated that facts narrated by the AR in argument that impugned investment was not made during the year under appeal rather the same was made by the wife of the taxpayer in July 2004 and subsequently transferred in the name of taxpayer in July 2005, is wrong and contrary to the factual position of the case. He also stated that the AR has challenged the addition of

Rs.52,500,000/- made on account of concealment of investment in AOP on different technical grounds as well also furnished certain documentary evidences.

21. The DR further stated that grounds taken by the AR appears to be an afterthought, as during the course of proceedings the appellant abstained from attending the proceedings and failed to furnish any explanation with supporting documentary evidences; whereas the appellant was provided reasonable opportunity of being heard at the time of amendment proceedings. As such, in terms of Section 128(4) the learned CIR(A) has not entertained the evidence so furnished by the appellant before him. That the addition of Rs.52,500,000/- was legally made in the case of taxpayer and correctly confirmed by the learned CIR(A).
22. After considering cross arguments of both sides, we are of the view that in the instant case the issue of limitation of action u/s 122(5A) is of core importance and has to be decided first. Other issues like jurisdiction, valid service, opportunity of being heard and explanation of source of investment are secondary in nature.
23. After the decision of Hon'ble Supreme Court of Pakistan, High Court Lahore and this Tribunal reported as 2015-11-TAX-104-Trib., we have reached at a conclusion that the departmental action is legally invalid in respect of a return which was filed on 25-09-2008, (prior to amendment in July 2009) the action u/s 122(5A) commenced on 25-06-2014 and completed on 30-06-2014 i.e within five days after a lapse of almost 5 years and nine months after receipt of return. There has been no express, implied or written recourse to the provisions of Section 214A of the Income Tax Ordinance, 2001.
24. In view of overwhelming effect of limitation of the legal action and our findings in the preceding para, other issues ie jurisdiction, source of investment need not to be adjudicated.

It appears that the conclusion has been rested on three judgments being that of Supreme Court, High Court and earlier Tribunal judgment. Learned counsel for the applicant remains unable to distinguish or displace the same and merely seeks time. 11 years later no case remains to entertain such request. It appears that the applicant is not interested in proceeding with the matter. Accordingly, in view of judgment of the Supreme Court in the case of C.I.R. vs. Rafeh Limited reported as PLD 2020 SC 518, this reference application is dismissed for non-prosecution

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001.

Judge

Judge