IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1570 of 2016

Plaintiff:	**Seasons Edible Oil Limited through Mr. Tasawar Ali Hashmi Advocate.**
Defendants:	**The Federal Board of Revenue & others through Mr. Altamash Arab Advocate. Mr. Umar Zad Gul Kakar DAG.**

For hearing of CMA No. 10196/2016.

Date of hearing: 19.11.2018
Date of order: 24.12.2018

O R D E R

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration & Permanent Injunction, whereby, the Plaintiff seeks a Declaration that Show Cause Notice dated 06.05.2016 is without jurisdiction, time barred, unlawful, void and of no legal effect; hence, may be quashed with a further relief of injunction retraining the Defendant No.3 from proceeding any further pursuant to the said Show Cause Notice.

2. Precisely the facts as stated are that Plaintiff filed its tax return for tax year 2010 on 04.11.2010 which was deemed to be an assessment order under Section 120 of the Income Tax Ordinance, 2001 ("**Ordinance 2001**") and thereafter, the said assessment order was amended under Section 122(5A) of the Ordinance, 2001 vide order dated 11.07.2011. Subsequently, the impugned Show Cause Notice dated 6.5.2016 has been issued under Section 122(5A) & (9) of the Ordinance, 2001 whereby, it has been urged that the amended assessment order is erroneous and prejudicial to the interest of Revenue; hence, further amendment is proposed. The Plaintiff has challenged this Show Cause Notice as being time barred under Section 122(4) of the Ordinance, 2001.

3. Learned Counsel for the Plaintiff has contended that after filing of return on 04.11.2010, the same was treated as a deemed assessment order under Section 120 ibid, and amended assessment order has already been made on 11.07.2011 and therefore, in terms of Section 122(4) (b) of the Ordinance, 2001 any further amendment of an amended assessment order can only be made within one year from the date of amended assessment order. According to him, the impugned Show Cause Notice has been issued much beyond this limitation; hence, it is time barred and therefore, cannot be proceeded further and as a consequence thereof, instant Suit be decreed as prayed for.

4. On the other hand, learned Counsel for the Department has argued the matter without filing any counter affidavit and written statement and has contended that since it is only a legal point involved; therefore, there is no need to file any counter affidavit or written statement and the entire Suit can be decided and disposed of by this Court. According to him, the contention of the Plaintiff is misconceived inasmuch as Section 122(4) ibid provides for two different situations i.e. in respect of amendment of an original assessment order, and further amendment of an amended assessment order, with a further rider by using the word "within the later of". Per learned Counsel, the Department has altogether a limitation of (6) six years in aggregate for making amendment of the assessment order and further amendments as many times as may be necessary, and the period of six years is to be counted from the end of the financial year in which a return has been filed and in this case the return is for tax year 2010, therefore, the five year period would start from 01.07.2011 to 30.06.2016 and thereafter, from 01.07.2017 to 30.06.2018 and therefore, the impugned Show Cause Notice is well within the period of limitation as provided in Section 122(4) of the Ordinance, 2001. In support he has relied upon ***Commissioner Inland Revenue V. Ch. Muhammad Akram (2013 PTD 1578) and Ms. Rafi Electronics Corporation (Pvt.) Ltd. Lahore V. C.I.T., R.T.O. Lahore (2011 PTD (Trib) 936).***

5. I have heard both the learned Counsel and perused the record. Since it is only a legal issue which is to be adjudicated in this matter and the Department has consented to proceed with this Suit without filing any counter affidavit and written statement, the entire Suit along with

pending applications is being heard and decided by framing a legal issue in terms of Order 14 Rule (2) CPC in the following manner:-

> "1) Whether the impugned Show Cause Notice dated 06.05.2016 is time barred and without jurisdiction?
>
> 2) What should the decree be?"

6. It is a matter of admitted fact that tax return for the year 2010 was filed by the Plaintiff on 04.11.2010 which is deemed to be an assessment order by virtue of Section 120(1) of the Ordinance, 2001. Thereafter, an amended assessment order has been passed on 11.07.2011 by exercising powers under Section 122(5A) of the Ordinance, 2001. Subsequently, on 06.05.2016 impugned Notice has been issued by exercising powers under Section 122(5A) & (9) of the Ordinance, 2001 on the ground that the said order i.e. the original assessment order, amended thereafter, is also erroneous and prejudicial to the interest of revenue for the reasons so stated in the Show Cause Notice which are not relevant for the present purposes nor the Counsel for the Plaintiff has agitated the same. It is only the question of limitation of the impugned Show Cause Notice which is under consideration. To have a better understanding of the controversy in hand, it would be advantageous to refer to the relevant part of Section 120 and 122 of the Ordinance, 2001 which reads as under:-

> [1][**120. Assessments**.—(1) Where a taxpayer has furnished a complete return of income (other than a revised return under sub-section (6) of section 114) for a tax year ending on or after the 1st day of July, 2002,—
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> (a) the Commissioner shall be taken to have made an assessment of taxable income for that tax year, and the tax due thereon, equal to those respective amounts specified in the return; and
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> (b) the return shall be taken for all purposes of this Ordinance to be an assessment order issued to the taxpayer by the Commissioner on the day the return was furnished.
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> **122. Amendment of assessments**.— (1) Subject to this section, the Commissioner may amend an assessment order treated as issued under section 120 or issued under section 121 by making such alterations or additions as the Commissioner considers necessary.
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> (2) No order under sub-section (1) shall be amended by the Commissioner after the expiry of five years from the end of the financial year in which the Commissioner has issued or treated to have issued the assessment order to the taxpayer.
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> (3) Where a taxpayer furnishes a revised return under sub-section (6) or (6A) of section 114 —

(a) the Commissioner shall be treated as having made an amended assessment of the taxable income and tax payable thereon as set out in the revised return; and
(b) the taxpayer's revised return shall be taken for all purposes of this Ordinance to be an amended assessment order issued to the taxpayer by the Commissioner on the day on which the revised return was furnished.
(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 the financial year in which the Commissioner has issued or is treated as having issued the original assessment order to the taxpayer; or
(b) one year from the end of the financial year in which the Commissioner has issued or is treated as having issued the amended assessment order to the taxpayer.
(4A)………..
(5)………….
(5A) Subject to sub-section (9), the Commissioner may, after making, or causing to be made, such enquiries as he deems necessary, amend, or further amend, an assessment order, if he considers that the assessment order is erroneous in so far it is prejudicial to the interest of revenue.
(5AA)…………
(5B) …………..
(6) ……………
(7) An amended assessment order shall be treated in all respects as an assessment order for the purposes of this Ordinance, other than for the purposes of sub-section (1).
(8)…………….
(9) No assessment shall be amended, or further amended, under this section unless the taxpayer has been provided with an opportunity of being heard.]

7. In terms of Section 120 of the Ordinance, 2001, where a taxpayer has furnished a complete return of income (other than a revised return under section 114), the Commissioner shall be taken to have made an assessment of taxable income for that tax year, and the return shall be taken for all purposes of this Ordinance to be an assessment order issued to the taxpayer by the Commissioner on the day the return was furnished. Similarly, the said assessment order can be further amended in terms of Section 122 wherein, various reasons and occasions have been provided for making amendment in the original assessment order; however, for the present purposes, it is only sub-section (4) and sub-section (5A) which needs consideration. The first amendment in the assessment order was made in terms of sub-section (5A) which provides that subject to sub-section (9), the Commissioner may, after making, or causing to be made, such enquiries as he deems necessary, amend, or further amend, an assessment order, if he considers that the assessment

order is erroneous insofar as it is prejudicial to the interest of revenue. It is a matter of admitted fact that the first amendment in the assessment order was made on 11.07.2011 and to that there is no dispute. However, it may be noted that the tax year involved is 2010 and within a span of 11 days after the end of the financial year on 30.06.2011, this assessment order has been amended in terms of Section 122(5A) of the Ordinance, 2001. Sub-section (4) thereof provides that 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 five years from the end of the financial year in which the Commissioner has issued or is treated as having issued the original assessment order to the taxpayer; or one year from the end of the financial year in which the Commissioner has issued or is treated as having issued the amended assessment order to the taxpayer. Now the precise issue as raised herein is to the effect that whether the amended assessment order issued under Section 122(5A) ibid can further be amended after a period of one year from the date of the amended assessment order. The Plaintiff's case is that it cannot be done after one year, whereas, the Department's case is that since there are two periods of limitations in sub-section (4), therefore, the amended assessment order can further be amended within a period of an aggregate of (6) six years. When the relevant provision of sub-section (4) is minutely examined, it appears that though it may not have been worded properly; however, the intention of the legislature is clear to the effect that firstly a deemed assessment order or an original assessment order can be amended and once it has been amended it can further be amended *as many times as may be necessary* within the *later of* the two periods of limitations provided under sub-section 4(a) and 4(b). Now if contention of the Plaintiff is accepted as correct, then perhaps, the words *as many times as may be necessary* and *within the later of* should not have been there in sub-section (4), as in that case the amended assessment order could not be further amended in this manner, as in that case the period of limitation would be reduced only to a maximum of one year from the date of an amendment assessment order, and there wouldn't be perhaps any such occasion, and even if it is, it would be a rarity. On the contrary, in the entire scheme of the Ordinance, 2001 a taxpayer is required to

maintain records of all sorts for a period of six years, whereas, the intention for providing a maximum limitation of six years in the aggregate in sub-section (4) of Section 122 ibid also appears to be in line and consonance with this period. If the argument of Plaintiff is accepted then this would amount to replacing the period of limitation in carrying out an amendment in the original assessment order as in this case the amended assessment order for the tax year 2010 has been made immediately after the end of the financial year on 11.07.2011, and if a period of one year is available to further amend the assessment order, then the same would end on 10.07.2012, and therefore, the period of limitation would be curtailed and this cannot be the intention of the legislature; hence, the stance is misconceived. In sub-section (4) it has been clearly provided that period of limitation for further amendment would be *the later of the two periods* given in sub-section 4 (a) & (b) and therefore, further amendment can always be carried out in the amended assessment order as many times as may be necessary, and a harmonious and purposive interpretation would be that it can be done up to a period of six years from the end of the financial year in which or for which the assessment order has been passed or made.

8. This issue in somewhat similar facts and circumstances came up before a learned Division Bench of the Lahore High Court in the case reported as ***Commissioner Inland Revenue Versus Ch. Muhammad Akram (2013 P T D 1578) and also reported as (PLD 2013 Lahore 627)*** wherein, in a Tax Reference the following two questions were raised on behalf of the Applicant which reads as under:-

> "1) Whether on the facts and circumstances of the case, the Tribunal was justified to annul the order passed under section 122(4) of the Income Tax Ordinance, 2001 by misconstruing the provisions of subsection (4) of section 122 of the said Ordinance?"
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> 2) Whether on the facts and circumstances of the case, the Tribunal was justified to ignore the phrase "within the later of" for calculation of time limit for amendment of assessment as provided under subsection (4) of section 122 of the Income Tax Ordinance, 2001?"

9. In that case the original assessment order of the taxpayer was made on 29.02.2007 and on filing of the return under Section 120 of the Ordinance, 2001, it was deemed to be an assessment order. Subsequently, the taxpayer filed a revised return under Section 114

(which is also deemed and treated as an amended assessment order under Section 122(3) (a)), ibid, and the original assessment order stood amended on 26.04.2008 in terms of Section 122(3) of the Ordinance, 2001. Thereafter, the assessment order was further amended on 12.01.2010 and in Appeal before the Appellate Tribunal, it was held that the further amendment was time barred in terms of Section 122(4) (b) of the Ordinance, 2001 against which the Reference was filed before the Lahore High Court. A learned Division Bench of the Lahore High Court speaking through *Syed Mansoor Ali Shah, J* as his lordship then was, has been pleased to interpret the word, "later of" in the following manner:-

> "7. It has been argued by the learned counsel for the respondent-assessee that the timelines given in section 122(4) (a) and (b) are distinct and separate and apply to two different sets of situations i.e., amendment of the original assessment order and amendment of an amended assessment order. The argument of the learned counsel for the respondent-assessee is misconceived and is a result of mis-reading of the legal provision. The language of section 122(4)(a) and (b) is clear and unambiguous. Both the timelines deal with different period of limitation for amendment(s) in assessment orders. The only difference is that both the timelines have a different reference/starting point for calculating the period of limitation. In subsection (a) the period begins from the end of the financial year in which the Commissioner has issued or has treated as having been issued the original assessment order to the taxpayer while in subsection (b) the period of one year begins from the end of the financial year in which the Commissioner has issued or has treated as having been issued amended assessment order. Subsection (a) does not imply that only original assessment order can be amended for the first time within a period of five years. In fact, on the contrary, it refers to "original assessment order" as a reference point for the commencement of the period of limitation. Therefore, an original assessment order can be amended any number of times within a period of five years from the end of the financial year in which the Commissioner has issued or treated as having issued the original assessment order. Similarly, in subsection (b) the start of the timeline of one year is from the end of the financial year in which the Commissioner has issued or is treated as having issued the amended assessment order. Theoretically, it is also possible that the two timeframes overlap for a certain period of time depending on the facts and circumstances of each case. The petitioner department has the option to invoke the available timeline, hence the term "later of" in sub-section (4) of section 122. The importance of the term "later of" needs to be underlined. This term indicates that both the timelines under subsections (a) and (b) are available to the petitioner department and the department has the option to place reliance on the timeline which expires later in time.
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> 8. In the present set of circumstances, the original assessment order is dated 29-2-2007, therefore, the period of 5 years under section 122(4)(a) expires on 29-2.2012. Therefore, the amendment brought about on 12-1-2010 comfortably falls within the above timeline. In this case, the timeline provided in section 122(4)(b) is not available to the petitioner department as more than one year has lapsed between the last amended assessment order (i.e., 26-4-2008) and the last assessment order (i.e., 12-1-2010)."

10. The above observations clearly spell out the intention of the legislature as contemplated in Section 122(4) ibid, and the two different limitation periods provided therein, and I am fully in agreement with such observation of the learned Lahore High Court. There is another aspect of the matter which has been briefly discussed in the preceding part of this opinion. And that relates to first filing of a return and treating the said return as a deemed assessment order in terms of Section 120 of the Ordinance, 2001. After filing of return and treating it as a deemed assessment order, there are two different situations and circumstances under which the said deemed assessment order could be amended for the first time. The first is provided under section 114(6) of the Ordinance, 2001, whereby the tax-payer himself can file a revised return and pay the extra tax accordingly. Now this filing of a revised return by the tax-payer itself is also treated as an amended assessment of the deemed or original assessment in terms of Section 122(3)(a). Therefore, if the interpretation as advanced on behalf of the Plaintiff is accepted as correct, then every tax-payer would file a revised return, immediately after filing of return and its treatment as a deemed assessment order, and such revised return which otherwise is to be treated as an amended assessment order, would permit the tax-payer to have the limitation period as against any further amendment of an assessment order, reduced to one year from the said amended assessment order, invariably. This would then be absurd and will give undue advantage to the tax-payer as against the wishes of the legislature and will also defeat the purposive interpretation of a statute. It is settled that while interpreting the law, a specific provision of any statute, which is independent in nature, cannot and should not ordinarily be held to be redundant, especially on the touchstone of another independent provision of the same statute; rather all possible efforts should be made to apply and adhere to the rules of purposive and harmonious construction, so that the allegedly conflicting provisions should be reconciled and saved.[1] It is also settled law that statute was the edict of the legislature and the language employed in the statute was determinative of the legislative intent, whereas, redundancy could not be attributed to statutory provisions or part thereof. (***See Pakistan Television Corporation Ltd., v Commissioner of Inland Revenue, Legal***-**PLD 2017 SC 718**). Every word used by the legislature must be given

[1] Waqar Zafar Bakhtawari v Haji Mazhar Hussain Shah (PLD 2018 SC 81)

its true meaning and provisions contained together in a harmonious manner. It is not legal to apply one provision of law in isolation from the other provision as no surplusages or redundancy can be attributed to the legislative organ of the state. (See ***Collector of Sales & Central Excise (Enforcement) v. Mega Tech (Pvt) Limited***-**2005 SCMR 1166**).

11. In view of hereinabove facts and circumstances of this case it can be safely held that the Show Cause Notice dated 6.5.2016 has been issued within the limitation period as provided in Section 122(4)(a) of the Ordinance, 2001, as this pertains to tax year 2010, and the period of five years would start from the end of financial year from 1.7.2011 and will end on 30.6.2016; hence it is not time barred. Issue No. 1 is answered in negative, and as a consequence thereof, Issue No.2 is answered by dismissing this Suit.

Dated: 24.12.2018

J U D G E

ARSHAD/