IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-3548 of 2019

Present:
Mr. Justice Irfan Saadat Khan
Mr. Justice Zulfiqar Ahmad Khan

Date of hearing	:	10.03.2022.
Petitioner	:	M/s. Yunus Textile Mills Limited through Mr. Mushtaq Hussain Qazi, Advocate.
Respondents No.1&2	:	The Federation of Pakistan and the Chairman, Federal Board of Revenue, respectively, through Mr. Kafeel Ahmed Abbasi, Deputy Attorney General for Pakistan **(DAG)**.
Respondents No.3 to 5	:	The Chief Commissioner Inland Revenue, The Commissioner Inland Revenue and The Additional Commissioner Inland Revenue, respectively, through Mr. Ameer Baksh Metlo, Advocate.

J U D G M E N T

IRFAN SAADAT KHAN, J: The instant petition has been filed impugning the Show Cause Notice **(SCN)** issued under Section 122(9) read with Section 122(5A) of the Income Tax Ordinance, 2001 **(the Ordinance-2001)** on the ground that it was without jurisdiction, unconstitutional, illegal, mala fide and contrary to clause (b) of subsection (4) of Section 122 of the Ordinance-2001 relating to tax year 2013.

2. Briefly stated the facts of the case are that the assessee is a public unlisted company incorporated in 2007 under the Companies Ordinance, 1984, and is engaged in the business of manufacturing and export of knitted, weaved and stitched fabrics and other textile articles. The petitioner received the impugned SCN on May 03, 2019 from the respondent No.5 mentioning therein that since their previous assessment made on 08.06.2016 was found to be erroneous insofar as prejudicial to the interest of revenue, therefore, they were required to furnish their reply in view of certain aspects warranting further amendment under the provisions of Section 122(5A) of the Ordinance. Though the reply to the above SCN has been given by the learned counsel for the petitioner, vide letter dated May 20, 2019, but since they were of the view that the department would ignore their reply and would make an assessment which, in their view, would be illegal, therefore, they filed the instant petition on 21.05.2019 and vide order dated 23.05.2019 got pre-admission notice issued to the respondents and also obtained an interim order that till next date no final adverse order may be passed against the petitioner pursuant to the impugned SCN.

3. Mr. Mushtaq Hussain Qazi, Advocate has appeared on behalf of the petitioner and stated that the SCN is without jurisdiction and illegal and is contrary to clause (b) of subsection (4) of Section 122 of the Ordinance-2001. He then read out the above provisions of the law and stated that on the face of it the impugned SCN is time barred. He next stated that for initiating proceedings under Section 122(9) of the Ordinance-2001 if the previous assessment is found to be erroneous

insofar as prejudicial to the interest of revenue, the department cannot initiate the said proceedings on the basis of change of opinion only. He stated that in the instant matter from the SCN it is evident that the tax credit which was allowed by the department after examination is sought to be reopened on the basis of mere change of opinion that the said tax credit was not available to the petitioner. He next stated that the said action of the department is also against the decision given by the Hon'ble Supreme Court of Pakistan in the case of *Commissioner of Income Tax Vs. Messrs Eli Lilly Pakistan (Pvt.) Ltd.* ***(2009 PTD 1392)***.

4. Mr. Qazi next explained that while making previous assessment the department categorically determined a refund of the assessee under Section 170 of the Ordinance-2001 and the present action of the department would amount to stultify the said determined refund of the assessee. He stated that no doubt the department has the authority under the law to reopen the assessment on certain parameters but not on account of change of opinion. He explained that in the instant matter the allegations raised in the SCN are nothing but a change of opinion on the part of the department as the department wants to re-determine the tax credit previously allowed to the petitioner which is not legally permissible. He, therefore, in the end stated that the impugned SCN may be vacated. In support of his contentions, the learned counsel has placed reliance on the following decisions:

i) *Dewan Khalid Textile Mills Ltd. Vs. Commissioner of Income Tax (Legal (Division), Large Taxpayers Unit, Karachi* ***(PTCL 2019 CL 1)***

ii) *E.F.U. General Insurance Co. Limited. Vs. The Federation of Pakistan and others* ***(PTCL 1997 CL 478)***

iii) *Messrs Central Insurance Co. and others Vs. The Central Board of Revenue, Islamabad and others* ***(1993 SCMR 1232)***

iv) *Messrs Pakistan Tobacco Co. Ltd. Vs. Government of Pakistan through Secretary, Ministry of Finance and 3 others* ***(1993 PTD 697)***

v) *Commissioner of Income-Tax, Central Zon-'C', Karachi Vs. Messrs CIT Vs. Messrs American Express International Banking Corporation Limited, Karachi* ***(1992 PTD 751)***

5. Mr. Ameer Buksh Metlo Advocate has appeared on behalf of the department /respondents No.3 to 5 and at the very outset stated that the instant petition is not maintainable as the petitioner in spite of availing the remedy of adopting departmental procedure has approached this Court by impugning the SCN. He stated that the petition is not maintainable on the very ground that a reply to the SCN has already been given by the petitioner hence the petitioner may be directed to wait for the final determination by the department and in case any adverse order is passed against them, they have the remedy to file an appeal against that determination before the concerned authority. He next stated that the issue raised in the instant petition is purely a matter of determination of fact that whether the petitioner was entitled for tax credit on its plant and machinery or not, which is to be determined after thrashing out the aspects in detail and the same could not be done in a writ petition. He, therefore, stated that whether the petitioner was entitled for tax credit or not could only be made after thrashing out the details /explanations furnished by the petitioner

to the tax department. He assured that in case the petitioner satisfies the department that the tax credit previously determined by the department was correct, no adverse inference would be drawn against the petitioner. He, however, stated since an objection with regard to the claim of tax credit by the petitioner has been raised by the department the same could only be determined, as explained earlier, after thrashing out the details /explanations furnished by the petitioner in accordance with law. He, therefore, stated that on this aspect also the petition is not maintainable and is liable to be dismissed.

6. Mr. Metlo next stated that whether the petitioner was given proper refund or not, again is a matter of determination of facts as the department has full authority under the law to reopen any matter or make the re-assessment in respect of the matters which were either erroneous or prejudicial to the interest of revenue. He explained that if the petitioner has been given excessive refund, the same definitely falls within the category of prejudicial to the interest of revenue and thus the department was fully justified in invoking the provisions of Section 122(9) read with Section 122(5A) of the Ordinance-2001. He invited our attention to a number of decisions given by the High Courts and the Hon'ble Supreme Court of Pakistan to explain that the petition on factual aspects and on issuance of SCN alone, requiring the petitioner to explain certain aspects, is not maintainable. He next stated that the decision in the case of Messrs Eli Lilly Pakistan (Pvt.) Ltd. has been held to be per incuriam by the Hon'ble Supreme Court itself in its decision given in the case of *Commissioner of Income-Tax, Peshawar Vs. Messrs Islamic Investment Bank Ltd.* ***(2016 PTD 1339)***

and hence the reliance of the learned counsel for the petitioner on the said decision (M/s. Eli Lilly Pakistan (Pvt.) Ltd.) is misconceived and not maintainable. He also invited our attention to Sections 122(4) and 122(5A) of the Ordinance-2001 and also read out the provisions of Section 66A of the Income Tax Ordinance-1979 **(the repealed Ordinance)** to state that the parameters as given under Section 66A of the repealed Ordinance are different from the provisions of Section 122(5A) hence, according to the learned counsel, if the department comes across any aspect which is found to be erroneous insofar as prejudicial to the interest of revenue the department can amend the assessments as many times as they wish subject to limitation.

7. According to Mr. Metlo the present action taken by the department is very much within the limitation period and therefore the stance of the learned counsel for the petitioner that the SCN issued is time barred is misconceived and not maintainable. He stated that as per the wordings of Section 122(4) of the Ordinance-2001 the department has the authority to amend an assessment within a period of five years plus one year, which is what exactly the department has done and thus the action of the department was in accordance with law. Mr. Maitlo next stated that there is no occasion of change of opinion in the instant matter as the issue confronted to the petitioner was raised for the first time and the legislature has given full powers to the department to amend the assessments, within the limitation period, as many times as deemed necessary and the instant SCN has been issued within the limitation provided under the law, therefore,

the submission of the learned counsel for the petitioner that it is barred by time is incorrect.

8. Mr. Metlo next stated that from the previous orders and the SCN issued it is very much evident that since the tax credit claimed by the petitioner was not as per Section 65(B) of the Ordinance-2001, therefore, the said issue was raised for the first time through the impugned SCN and the petitioner was simply required to furnish his explanation with regard to the tax credit claimed by him so that proper adjudication on the said issue could be made by the department. He stated that the refund is always granted subject to amendments and rectifications, hence the claim of the petitioner that once after determining the refund the department is ceased from raising the issue with regard to that determination of refund or that of tax credit, as the case may be, according to him is wholly misconceived. He finally submitted that in view of what has been explained above this petition being bereft of any merit is liable to be dismissed with cost. In support of his above contentions, the learned counsel has placed reliance on the following decisions:

i) *Commissioner of Income Tax, Peshawar Vs. Messrs Islamic Investment Bank Ltd.* ***(2016 PTD 1339)***

ii) *Seasons Edible Oil Limited (Formerly Wali Oil Mills Limited) through Authorized Attorney Vs. The Federal Board of Revenue through Chairman, FBR, Islamabad and 3 others* ***(2019 PTD 1619)***

iii) *Commissioner of Income Tax, Companies-II and another Vs. Hamdard Dawakhana (Waqf), Karachi* ***(PLD 1992 Supreme Court 847)***

iv) *Commissioner Inland Revenue Vs. Ch. Muhammad Akram (PLD 2013 Lahore 627)*

v) *Commissioner Inland Revenue, Zone-1, RTO, Rawalpindi Vs. Messrs Khan CNG Filling Station, Rawalpindi and others* ***(2017 PTD 1731)***

vi) *Decision given by this Court in C.P. No.D-1359 of 2021 (M/s. Sakrand Sugar Mills Limited Vs. Federation of Pakistan and others) and other connected petitions.*

vii) *Commissioner Inland Revenue and others Vs. Jahangir Khan Tareen and others* ***(2022 PTD 232)***

viii) *Deputy Commissioner of Income Tax/Wealth Tax, Faisalabad and others Vs. Messrs Punjab Beverage Company (Pvt.) Ltd.* ***(2007 PTD 1347)***

ix) *Messrs Amin Textile Mills (Pvt.) Ltd. Vs. Commissioner of Income-Tax and 2 others* ***(2000 SCMR 201)***

x) *Dr. Seema Irfan and others Vs. Federation of Pakistan and others (PLD 2019 Sindh 516)*

xi) *Van Oord Dredging and Marine Contractor B.V. through authorized attorney Vs. Pakistan through Secretary Revenue and 3 others* ***(2020 PTD 2008)***

9. Mr. Mushtaq Hussain Qazi, Advocate, in his rebuttal, has stated that it is a settled proposition of law that if any action is taken without jurisdiction the whole edifice built upon an illegal assumption of jurisdiction would be illegal. He stated that since the very SCN was illegal, therefore, the petitioner was not legally obliged to wait for final determination by the department so as to file an appeal against that determination. In support of his contention, the learned counsel has placed reliance upon the following decisions:

i) *Messrs Usmania Glass Sheet Factory Limited, Chittagong Vs. Sales Tax Officer, Chittagong* ***(PLD 1971 SC 205)***

ii) *Utility Stores Corporation of Pakistan Limited Vs. Punjab Labour Appellate Tribunal and others* ***(PLD 1987 SC 447)***

10. Mr. Kafeel Ahmed Abbasi, DAG has appeared on behalf of the respondents No.1 & 2 and has adopted the arguments of Mr. Metlo.

11. We have heard all the learned counsel at considerable length and have also perused the record and the decisions relied upon by them.

12. Before proceeding any further, we deem it appropriate to reproduce herein below the relevant provisions of law relied upon by the learned counsel:

The repealed Ordinance

66. Limitation for assessment in certain cases: (1) Notwithstanding anything contained in Section 64 and sub-section (3) or Section 65 where in consequence of, or to give effect to any finding or direction contained in any order made under this Chapter or Chapters VIII, XIII or XIV or any order made by any High Court or the Supreme Court of Pakistan in exercise of its original appellate jurisdiction,--

(a) an assessment is to be made on any firm or a partner of any firm; or

(b) an assessment is to be made on the assessee or any other person; or

(c) an assessment has been set aside, in full or in part, by an order under section 132 or section 135 and no appeal is filed under section 134 against such order or no appeal filed under section 136 in respect thereof, as the case may be,

such assessment may be made at any time within two years in any case to which clause (a) or clause (b) applies, and within one year in any case to which clause (c) applies, from the end of the financial year in which such order is received by the Deputy Commissioner.

(2) Where by any such order, as is referred to in sub-section (1), any income is excluded--

(i) from the total income of the assessee for any year and held to be the income of another year;

(ii) from the total income of one person and held to be the income of another person,

the assessment of such income as income of another income year or of another person, as the case may be, shall, for the purposes of the said sub-section be deemed to be an assessment made in consequence of or to give effect to a finding or direction contained in sub order.

(3) Notwithstanding anything contained in this ordinance, where the ownership of any property the income from which is chargeable under this ordinance is in dispute in any Civil Court in Pakistan, the assessment on any person in respect of such income may be made at any time within one year of the end of the financial year in which the decision of such court is brought, or otherwise comes, to the notice of the Deputy Commissioner.

The Ordinance-2001

122. Amendment of assessments. -- *(1).. .. ..*

(2) .. ..

(3) .. ..

(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 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) .. ..

(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:

Provided that order under this section shall be made within one hundred and twenty days of issuance of show cause notice or within such extended period as the Commissioner

may, for reasons to be recorded in writing, so however, such extended period shall in no case exceed ninety days. This proviso shall be applicable to a show cause notice issued on or after the first days of July, 2021.

Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or agreed assessment proceedings under section 122D or the time taken through adjournment by the taxpayer not exceeding sixty days shall be excluded from the computation of the period specified in the first proviso.

***170. Refunds.**--(1) A taxpayer who has paid tax in excess of the amount which the taxpayer is properly chargeable under this Ordinance may apply to the Commissioner for a refund of the excess.*

(1A) Whereas any advance or loan, to which sub-clause (e) of clause (19) of section 2 applies, is repaid by a taxpayer, he shall be entitled to a refund of the tax, if any, paid by him as a result of such advance or loan having been treated as dividend under the aforesaid provision.

(2) An application or a refund under sub-section (1) shall be--

(a) made in the prescribed form;

(b) verified in the prescribed manner; and

(c) made within three years of the later of

(i) the date on which the Commissioner has issued the assessment order to the taxpayer for the tax year to which the refund application relates; or

(ii) the date on which the tax was paid.

(3) Where the Commissioner is satisfied that tax has been overpaid, the Commissioner shall--

(a) apply the excess in reduction of any other tax due from the taxpayer under this Ordinance;

(b) apply the balance of the excess, if any, in reduction of any outstanding liability of the taxpayer to pay other taxes; and

(c) refund the remainder, if any, to the taxpayer.

(4) The Commissioner shall, within sixty days of receipt of a refund application under sub-section (1), serve on the person applying for the refund an order in writing of the decision after providing the taxpayer an opportunity of being heard.

(5) A person aggrieved by--

(a) an order passed under sub-section (4); or

(b) the failure of the Commissioner to pass an order under sub-section (4) within the time specified in that sub-section,

may prefer an appeal under Part III of this Chapter.

(6) The Board may make rules regulating procedure for expeditious processing and automatic payment of refunds through centralized processing system with effect from a date to be notified by the Board.

13. The arguments of Mr. Mushtaq Hussain Qazi could be summarized as below:

i) That the SCN issued by the department is barred by law, as provided under Section 122(4) of the Ordinance, hence illegal.

ii) That the SCN is a result of change of opinion, as the department after reaching to a certain conclusion now wants to reassess the income of the assessee on the same set of facts, which is not permissible under the law.

So far as the issue of time barred amended assessment is concerned it may be seen that subsection (4) of Section 122 stipulates two conditions for amending or further amending as many times the original assessments, which are provided under clauses (a) and (b) of Section 122(4) of the Ordinance. However, the most important point which is to be noted are the words “within the later of”. A perusal and interpretation of these words clearly stipulates that the law framer desires that of the two conditions, as provided in clauses (a) and (b) of Section 122(4), where the Commissioner wants to further amend an original assessment the limitation within the later of the two would be applied. The word “or” used at the end of clause (a) and before the

beginning of clause (b) stipulates that the Commissioner is empowered by looking to the situation of the matter to apply either clause (a) or clause (b), as the case may be. Somewhat similar situation came up for hearing in the case of *Commissioner Inland Revenue Vs. Ch. Muhammad Akram* ***(PD 2013 Lahore 627)*** wherein it was observed that where timeline under clause (a) and clause (b) are available to the department, the department has the option to place the reliance on the timeline which expires later in time. Now if the facts of the present case are examined, it would be seen that the tax year under consideration is 2013. The return for the said tax year was filed on 31.12.2013 and the financial year would end on 30.06.2014. Now if the limitation of five years is counted from 01.07.2014 it would end on 30.06.2019, whereas the notice was issued on 30.05.2019, hence condition as contained in clause (a) is fully satisfied. Hence, we disagree with the contention raised by Mr. Qazi that the matter is time barred as from the facts noted above it is apparent that the case of the petitioner falls under Section 122(4) of the Ordinance for which the time limit is five years and admittedly the SCN issued for amending the assessment is within five years which is "within the later of" the two clauses (a) and (b) and the department has the authority to apply either clause (a) or clause (b), as the case may be, looking to the facts and circumstances of each case. Hence, the SCN is not found to be time barred.

14. The next issue raised by Mr. Mushtaq Hussain Qazi is with regard to change of opinion. Though the term "change of opinion" has not been defined anywhere but the various pronouncements given by

this Court or the other Courts or the Hon'ble Supreme Court denotes a change of opinion on the part of the department on the basis of same facts upon which an opinion has already been formed earlier by the department, for instance if the details of assessee are examined and the department on those very facts has formed an opinion, the department under the law has no jurisdiction on the same given facts to change its opinion and to come to another conclusion. Now if the facts of the present case are examined, it may be seen that originally the tax credit was granted to the petitioner by categorically mentioning "subject to verification". Even in the refund order also tax credit /refund was granted to the petitioner by categorically mentioning "subject to verification". These words clearly denote that while making the original assessment and while amending the said assessment the department has accepted the version with regard to tax credit /refund in its entirety by categorically mentioning that the same would be subject to verification. In the SCN it is evident that the department has simply required from the petitioner to furnish evidences with regard to certain equipments claimed as plant and machinery that whether these were used directly in the manufacturing activity or not and that whether these could come and fit in within the meaning of plant and machinery used by the petitioner in its manufacturing activity. In our view, this exercise could only be undertaken after obtaining explanations and complete details from the petitioner. It is apparent from the SCN that the department has not questioned those equipments directly used in the manufacturing process and the same have been accepted as plant and machinery, but

has enquired in respect of those equipments detail of which has been given in the SCN, which as per the department do not fall within ambit of plant and machinery and requires verification. In our view the onus in this regard lies squarely upon the petitioner to prove with cogent material, details and explanation with regard to its claim of these equipments claimed by it as plant and machinery for the purposes of grant of tax credit, which would ultimately result in a refund to the petitioner.

15. The department, in our view, has the jurisdiction to enquire from the petitioner with regard to its said claim of tax credit and if the petitioner satisfies the department that their claim was justified and they were entitled to the tax credit /refund, the department is obliged to grant the said tax credit /refund to the petitioner, as from the documents, available on the record, previously this exercise was not done and was left open by clearly mentioning "subject to verification", hence on this aspect also we do not agree with the contention raised by Mr. Qazi that there has been a change of opinion on the part of the department, we see no adjudication of the department so far as the claim of tax credit /refund is concerned as through the present SCN the department has simply asked the petitioner to furnish the details with regard to the said claim of tax credit made by them in accordance with law. Hence, on this aspect also we do not find any reason to interfere in the SCN issued by the department.

16. In a recent decision given by this Court in C.P. No.D-1359 of 2021 (M/s. Sakrand Sugar Mills Limited Vs. Federation of Pakistan and others) and other connected petitions it was observed that since the High Court cannot assume the supervisory jurisdiction with regard to the issuance of SCN, the contention of the petitioners in that petitions was not accepted. The relevant extracts of the decision given in the said petition are reproduced herein below:

> *13. In the instant matters it is noted that the department has issued the SCNs to the petitioners requiring from them certain explanations /details, which require factual findings before imposition of the penalty; hence, it could not be said that these SCNs either lack jurisdiction or were not in accordance with law, since by issuing the SCNs the department has provided an opportunity to the petitioners to give valid /cogent reasons based on facts that penalty could not be imposed upon them by the department. It is also a settled proposition of law that in the matters of issuance of SCN, the High Court cannot assume the supervisory jurisdiction with regard to the factual aspects, which could only be decided /considered after obtaining reply from the petitioners. Hence, in our view, the petitioners are not entitled to bypass the remedies available to them by invoking writ jurisdiction without firstly replying to the SCNs issued by the department.*
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> *14. In the case of Messrs Castrol Pakistan (Pvt.) Ltd. Through Accountant Vs. Additional Commissioner Inland Revenue and others (2015 PTD 2467) a Divisional Bench of this Court has deprecated the tendency of challenging the SCNs by way of writ jurisdiction when the petitioners have the remedy to file appeals in case of any adverse order is passed against them. In the present cases also, in worst scenario, if penalty is imposed by the department, under the provisions of Section 182 of the Ordinance, upon the petitioners, they have the legal remedy to file an appeal against the said penalty order before the Commissioner (Appeals) under Section 127 of the Ordinance. In the case of Deputy Commissioner of Income Tax/Wealth Tax, Faisalabad and others Vs. Messrs Punjab Beverage Company (Pvt.) Ltd. (2007 PTD 1347) the Hon'ble Supreme Court of Pakistan has categorically deprecated the tendency of filing the petitions before the High Court on the basis of SCNs bypassing the remedy as provided under the law. In the case of Roche Pakistan Ltd. Vs. Deputy Commissioner of Income-Tax and others (2001 PTD 3090) a Divisional Bench of this Court has observed that in case of availability of adequate alternate remedy by way of appeal the petition is not*

maintainable. In the decision given in the case of Messrs Pakistan Telecommunication Company Ltd. Through duly Authorized Attorney and others Vs. Province of Sindh through Secretary, Ministry of Finance and 2 others (2015 PTD 2072) a Divisional Bench of this Court did not find any ground to interfere under Article 199 of the Constitution in respect of the SCN issued by the department. In the case of Messrs Maritime Agencies (Pvt.) Ltd. Through Company Secretary Vs. Assistant Commissioner-II of SRB and 2 others (2015 PTD 160) a Divisional Bench of this Court has declined to interfere in respect of the SCN issued by the authority. The decisions relied upon by the learned counsel for the petitioners are found to be distinguishable from the facts obtaining in the instant petitions.

17. So far as the decisions relied upon by Mr. Qazi are concerned, the decision given in the case of Messrs Eli Lilly Pakistan (Pvt.) Ltd., which has upheld the decision given in the case of Honda Shahra-e-Faisal, has already been held to be per incuriam by the Hon'ble Supreme Court in the case of Messrs Islamic Investment Bank Ltd., quoted supra. In the case of Messrs Eli Lilly Pakistan (Pvt.) Ltd. the decision of Honda Shahra-e-Faisal was affirmed hence the reliance of the learned counsel upon the decision given in the case of Messrs Eli Lilly Pakistan (Pvt.) Ltd. is of no significance. The decisions relied upon by Mr. Qazi, so far as the change of opinion, are concerned are also of no avail as in those judgments it was held that the department has no authority to change its opinion on the basis of same set of facts, whereas in the instant matter it was found that the issue sought to be amended by the department was never properly thrashed out by it and the tax credit granted to the petitioner was "subject to verification" hence all the decisions relied upon by the learned counsel for the petitioner on change of opinion are found to be distinguishable from the facts obtaining in the instant matter.

18. We agree with the learned counsel for the petitioner that where statutory right of a person is infringed writ is the proper remedy but in the instant matter, as noted above, no statutory right of the petitioner has been found to be infringed as in the SCN the petitioner was simply directed to furnish some details /explanations and the matter with regard to adjudication on those aspects is yet to be made by the department, hence, it could not be said that any statutory right of the petitioner has been infringed so as to invoke the writ jurisdiction. Thus the decisions relied upon by Mr. Qazi on this aspect also are found to be distinguishable and not applicable on the present petition.

19. It was held in a number of decisions given by the High Court that where the department seeks an explanation or directs a person to produce documentary evidence, the said action could not be challenged in a writ jurisdiction. Reliance in this regard may be made to the decision given in the cases of *Noor Hospital Vs. I.A.C. of Income Tax* ***[(1994) 70 Tax 20 (H.C. Lah.)]*** and *Ahmad Fabric Vs. Inspecting Additional Commissioner of Income Tax and others* ***[(1999) 80 Tax 93 (H.C. Lah.)]***. It was held by the High Courts that where a deduction has wrongly been allowed or where the assessee was called upon to explain his investment, the reassessment proceedings are valid. Reliance in this behalf may be made to the decisions given in the cases of *Commissioner of Income Tax, Rawalpindi Zone, Rawalpindi Vs. Safdar and Company, Gujrat* ***[(1980) 42 Tax 171 (H.C. Lah.)]*** and *J.L. Wei and Co. Vs. Commissioner of Income Tax* ***[(1989) 59 Tax 108 (H.C. Kar.)]***.

20. The upshot of the above discussion is that the petitioner is directed to pursue the matter with regard to the SCN issued by the department since a reply in the instant matter has already been filed by the petitioner to them. The department is also directed to finalize the matter within one month's time from the date of receipt of this order strictly in accordance with law, after providing opportunity of hearing to the petitioner. Needless to state that the department is legally bound to consider the reply /replies already filed or would be filed subsequently by the petitioner and thereafter decide the matter through a well-reasoned and speaking order, strictly in accordance with law. With these directions the instant petition, along with listed /pending application(s), stands disposed of.

JUDGE

JUDGE

Karachi:

Dated: .03.2022.