

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present:  
Mr. Justice Muhammad Shafi Siddiqui, CJ  
Mr. Justice Agha Faisal**

C.P. No.D-3062 of 2020

Sabre Travel Network Pakistan (Pvt.) Ltd.

Versus

Pakistan & others

**ALONG WITH**

1	C.P. No.D-3752/2016	DHA Global Forwarding Pakistan v. Pakistan & others
2	C.P. No.D-3780/2017	Alpha Insurance Company Ltd v. Pakistan & others
3	C.P. No.D-4293/ 2017	International Air Transport Association v. Pakistan & others
4	C.P. No.D-4340/2019	Sabre Travel Network Pakistan (Pvt.) Ltd. v. Pakistan & others
5	C.P. No.D-3036/2020	Eni Pakistan Limited v. Pakistan & others
6	C.P. No.D-860/2021	J & P Coats Pakistan (Pvt.) Ltd. v. Federation of Pakistan & others
7	C.P. No.D-3235/2021	JS Global Capital Limited v. Pakistan & others
8	C.P. No.D-3760/2021	Hapag Llyod Pakistan Limited v. Pakistan & others
9	C.P. No.D-3761/2021	Sabre Travel Network Pakistan (Pvt.) Ltd. v. Pakistan & others
10	C.P. No.D-3846/2021	International Air Transport Association v. Pakistan & others
11	C.P. No.D-3125/2022	Sanofi-Aventis Pakistan Limited v. Pakistan & others
12	C.P. No.D-3523/2022	Dubai Islamic Bank Pakistan Limited v. Pakistan & others
13	C.P. No.D-3524/2022	Dubai Islamic Bank Pakistan Limited v. Pakistan & others
14	C.P. No.D-3543/2022	Citibank N.A. v. Pakistan & others

Date of Hearing: 10.05.2023 and 28.10.2024

Petitioners in all petitions except C.P. No.D-860 of 2021: Through M/s. Hyder Ali Khan, Furqan Mushtaq, Samar Ali Khan, Hamza Waheed and Sami ur Rehman, Advocates.

Petitioners in C.P. No.D-860 of 2021: Through Mr. Ovais Ali Shah Advocate.

Respondent Federation of Pakistan: Through Ms. Wajiha Mahdi, D.A.G.

Respondent Departments: Through Mr. Ameer Bakhsh Metlo along with Ms. Zakia Khan, Mr. Shahid Ali Qureshi, Ms. Huma Sodhar, Mr. Asad Aftab Solangi, Mr. Faheem Raza, Mr. Zulfiqar Ali Domki, Mr. Mukesh Kumar Khatri, Syed Irshad-ur-Rehman, Mr. Abdul Ghaffar, Syed Shohrat Hussain Rizvi, Mr. Muhammad Aqeel Qureshi, Advocates.

## J U D G M E N T

Muhammad Shafi Siddiqui, CJ.- In this bunch of petitions common questions of law are involved such as:

- (i) *whether the impugned notices are without jurisdiction, ultra vires and barred by time under the scheme offered by the Income Tax Ordinance, 2001 (the Ordinance) and*
- (ii) *what is the effect of special tax year vis-à-vis financial year of which the approval was accorded under section 74(5) of the Ordinance to all the petitioners.*

2. We have heard learned counsel for the petitioners as well as the respondents and perused material available on record.

3. “Tax years” are envisaged under Part-II, Section 74 of the Ordinance 2001. It caters for a normal tax year comprising of 12 consecutive months ending 30<sup>th</sup> June hence starting point is ascertainable along with Special Tax Year which is also computation of 12 consecutive months to applicant’s choice, which shall be denoted by a calendar year in which the said date falls.

4. All the petitioners were accorded the subject approval of “special tax year” under section 74(5) of the Ordinance on their respective applications under section 74(3). Such taxpayers, in pursuance thereof, have utilized 12 months period other than a normal tax year as a special tax year.

5. Tax year for the petitioners runs from 1<sup>st</sup> January to 31<sup>st</sup> December. So for the tax year 2010 the income period is counted from

01.01.2009 to 31.12.2009 when read in conjunction with Section 74(1) of the Ordinance. Subsection (2) of Section 74 is also significant in the sense that it provides a clarity:

*“(2) Where a person’s income year, under the repealed Ordinance, is different from the normal tax year, or where a person is allowed, by an order under sub-section (3), to use a twelve months’ period different from normal tax year, such income year or such period shall be that person’s tax year (hereinafter referred to as ‘special tax year’) and shall, subject to sub-section (3), be denoted by the calendar year relevant to normal tax year in which the closing date of the special tax year falls.”*

6. To us the closing date of the Special Tax Year is important, which has implication but required reading with Section 74(10) of the Ordinance.

7. Mr. Ameer Bakhsh Metlo and Mr. Shahid Ali Qureshi, learned counsel appearing for the respondents, however did not agree with such understanding of “financial year”, as attempted by petitioners, and computation for the purpose of Section 122(2) of the Ordinance as attempted by Mr. Hyder Ali Khan. The understanding of Mr. Metlo and Mr. Qureshi is that if a special tax year is accorded and the petitioner is required to file its return on or before 31<sup>st</sup> December following year, per Section 120(1)(b) such returns will be deemed to be an assessment order issued by the Commissioner on the day return was furnished and consequently the financial year. Per Mr. Metlo and Mr. Qureshi in terms of Section 122(5) such deemed assessment order cannot be amended after expiry of five years from the end of “financial year” in which commissioner has issued or treated to issued assessment order to the tax payer.

8. Mr. Metlo has drawn attention of this Court to Article 260 of the Constitution of Islamic Republic of Pakistan, 1973 which provides a definition of financial year which means year commencing on the first day of July and per General Clauses Act 1897 financial year means (a) as

respects the period before first day of April 1959, the year commencing on the 1<sup>st</sup> day of April and ending on 31<sup>st</sup> day of March; (b) as respects the period from the 1<sup>st</sup> day of April, 1959, to the 31<sup>st</sup> day of June, 1959, both days inclusive, that period ; and (c) thereafter, the year commencing on the 1<sup>st</sup> day of July and ending on the 30<sup>th</sup> day of June. On the basis of the aforesaid calculation it is claimed that notices were not time barred as six months additional period by default and deemed assessment falling on a financial year by above definition of financial year.

9. We need not to explain the special tax year for every petitioners, as identified in the impugned notices, as we are only obliged to decide as to what is the effect of seeking an approval of the special tax year and its consequences as far as the impugned notices, which are claimed to be barred by time, are concerned. As demonstrated by petitioners and not opposed, all the petitioners were accorded approval to the use of special tax year under section 74(5) of the Ordinance and for the purposes of clarity a tax year for the petitioner runs from 1<sup>st</sup> January to 31<sup>st</sup> December. A brief history of tax year, deemed assessment, limitation and notice date would give us a bird eye view to understand the questions involved, however the only debate in the following chart is of date of deemed assessment and limitation run, from column 7 and 8 which affects column 10 however one must not lose sight of Section 74(10) of the Ordinance:

1	2	3	4	5	6	7	8	9	10
Sr. No	C.P. No.D-	Title	Tax Year	Period under said Tax Year	Corresponding Normal Tax Year	Date of ITR/ Deemed Assessment Order	Limitation Runs From	Relevant Limitation Section	Notices became time barred on & Date of notice
1	3752 of 2016	DHA Global Forwarding Pakistan v. Pakistan & others	2010	01.01.2009 to 31.12.2009	01.07.2009 to 30.06.2010	30.10.2010	01.01.2011	Sec: 122 (5B) r/w 122 (2)	31.12.2015 30.06.2016
2	3780 of 2017	Alpha Insurance Company Ltd v. Pakistan & others	2011	01.01.2010 to 31.12.2010	01.07.2010 to 30.06.2011	16.11.2011	01.01.2012	Sec: 122 (5B) r/w 122 (4)	31.12.2016 16.05.2017
3	4293 of	International Air Transport	2011	01.01.2010 to	01.07.2010 to	01.11.2011	01.01.2012	Sec: 122 (5B) r/w 122 (2)	31.12.2016 08.06.2017

	2017	Association v. Pakistan & others		31.12.2010	30.06.2011				
4	4340 of 2019	Sabre Travel Network Pakistan v. Pakistan & others	2013	01.01.2012 to 31.12.2012	01.07.2012 to 30.06.2013	16.12.2013	01.01.2014	Section 122 (2)	31.12.2018 18.06.2019
5	3036 of 2020	Eni Pakistan Limited v. Pakistan	2014	01.01.2013 to 31.12.2013	01.07.2013 to 30.06.2014	05.12.2014	01.01.2015	Section 122 (2)	31.12.2019 18.06.2020
6.	860 of 2021	J & P Coats Pakistan (Pvt.) Ltd. v. Federation of Pakistan & others	2015	01.01.2014 to 31.12.2014	01.07.2014 to 30.06.2015	31.12.2014	01.01.2015	Section 122(2)	31.12.2020 31.12.2020
6	3062 of 2020	Sabre Travel Network Pakistan v. Pakistan & others	2014	01.01.2013 to 31.12.2013	01.07.2013 to 30.06.2014	23.12.2014	01.01.2015	Section 122 (2)	31.12.2019 23.06.2020
7	3235 of 2021	JS Global Capital Limited v. Pakistan & others	2015	01.01.2014 to 31.12.2014	01.07.2014 to 30.06.2015	30.11.2015	01.01.2016	Section 122 (5B) r/w 122 (2)	31.12.2020 13.04.2021
8	3760 of 2021	Hapag Llyod Pakistan Limited v. Pakistan & others	2015	01.01.2014 to 31.12.2014	01.07.2014 to 30.06.2015	01.10.2015	01.01.2016	Section 122 (2)	31.12.2020 05.06.2021
9	3761 of 2021	Sabre Travel Network Pakistan v. Pakistan & others	2015	01.01.2014 to 31.12.2014	01.07.2014 to 30.06.2015	30.11.2015	01.01.2016	Section 122 (2)	31.12.2020 02.04.2021
10	3846 of 2021	International Air Transport Association v. Pakistan & others	2015	01.01.2014 to 31.12.2014	01.07.2014 to 30.06.2015	26.12.2015	01.01.2016	Section 122 (2)	31.12.2020 08.06.2021
11	3125 of 2022	Sanofi-Aventis Pakistan Limited v. Pakistan & others	2016	01.01.2015 to 31.12.2015	01.07.2015 to 30.06.2016	15.12.2016	01.01.2017	Section 122 (2)	31.12.2021 06.06.2022
12	3523 of 2022	Dubai Islamic Bank Pakistan Limited v. Pakistan & others	2016	01.01.2015 to 31.12.2015	01.07.2015 to 30.06.2016	16.12.2016	01.01.2017	Section 122 (2)	31.12.2021 24.05.2022

10. Under the scheme of the Ordinance a return filed in accordance with Section 114 of the Ordinance is treated as assessment order under section 120<sup>1</sup>. Under section 122 of the Ordinance the Commissioner may issue notice to amend an assessment order in only specified circumstances (a) such action may have been taken under section 122(5) if the Commission “on the basis of definite information acquired from audit or otherwise find it necessary to do so”; (b) the commissioner may under section 122(5A) amend the assessment order if he considers that such order is “erroneous insofar as it is prejudicial to the interest of

<sup>1</sup> 120. Assessments.—(1) ....

(a) ...

(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.

revenue”. In both the cases however the assessment order cannot be amended after the period of limitation mentioned in Section 122(2) of the Ordinance.

11. For the purposes of understanding we may consider the law prior to the passing of Finance Act, 2009. Section 122(2) of the Ordinance prior to the Finance Act 2009 is as follows:

*“An assessment order shall only be amended under subsection (1) **within five years** after the commissioner has issued or is treated as having issued the assessment order on the taxpayer.”*

12. It could be seen that the earlier Section 112(2) provides period of limitation to amend an assessment order, when read in conjunction with section 120(1)(b) of the Ordinance, was five years from the date of filing of return. Since Finance Act 2009, Section 122(2) of the Ordinance was amended which reads as under:-

*“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.”*

13. Thus, the purpose, prima facie, is to retune the period of limitation “of five years” from the date of filing of the return to the date of “end of the financial year” in which such return was filed and commissioner has issued or treated to have issued the assessment order to the taxpayer. No order could be passed even if the show-cause notice is issued on the last day when limitation ends, as essentially the “order” could not be passed after expiry of five years. Normally December is not the end of financial year, end of financial year is 30<sup>th</sup> June, which was not altered under Section 74(5) of the Ordinance and one may be carried away by presuming that the financial year is one where deemed assessment has fallen, however Section 74 subsection (10) has treated financial year to have included Special Tax Year, unless the context otherwise requires.

14. The entire explanation of financial year of deemed assessment, as argued by Mr. Metlo and Mr. Qureshi has fallen apart when read with

Section 74(10) of the Ordinance. For the sake of convenience Section 74(10) of the Ordinance is reproduced as under:-

*74. Tax year.- (1) ....*

*....*

*(10) In this Ordinance, a reference to a particular financial year shall, unless the context otherwise requires, include a special tax year or a transitional tax year commencing during the financial year.*

15. In the absence of above explanation the arguments of M/s Metlo and Qureshi sounds logical as then Section 122(2) of the Ordinance would have a normal application. It would have counted from end of financial year in which commissioner has issued or treated to have issued the assessment order to the taxpayer, however, section 74(10) disturbed the logics as argued by respondents. Subsection (10) of Section 74 says that Special Tax Year is inclusive of the financial year, unless the context otherwise requires. So Special Tax Year ends on 31<sup>st</sup> December of any year is named “financial year” by Section 74(10) of the Ordinance. The limitation would then be counted from 1<sup>st</sup>. January of following year. The above chart explains the position clearly and correctly.

16. Sections 122(2) and 74(10) of the Ordinance must sink to each other with clarity and above is the only way of reading both together and saving them without any offending tentacles.

17. In view of above, the petitions are allowed and the impugned show-cause notices are held to be without jurisdiction and are barred by time and no subject therein could be carried lawfully. C.P. Nos.D-3524 and 3543 of 2022 however appears to be on different facts and/or law and is de-tagged to be fixed by the office as per roster for further proceedings after notices to all concerned parties.

Dated: 21.11.2024

**Chief Justice**

**Judge**