

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

ITRA 187 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection No.26.
2. For orders on CMA No.1549/2024.
3. For orders on CMA No.1550/2024.
4. For hearing of main case.

26.03.2026

Mr. Naseer Ahmed Abbasi, advocate files Vakalatnama on behalf of applicant, same is taken on record.

The reference has impugned the order dated 07.05.2024 rendered in MA (Cond.) No.1887/KB/2023, MA (AG) No.100/KB/2024, ITA No.1562/KB/2023, which reads as follows:

“By this order, we tend to dispose of the above listed miscellaneous application for condonation of delay, additional grounds for condonation and main appeal which have been filed by the Applicant/Taxpayer against the impugned order dated 14-07-2022 passed the Commissioner Inland Revenue (Appeals-IV), Karachi whereby he confirmed the order of the Assistant/Deputy Commissioner Inland Revenue, dated 29.01.2021. The Taxpayer filed appeal against the order of learned CIR(A) on 20-06-2023, after a delay of 281 days.

2. The Applicant/Taxpayer filed this miscellaneous application along with additional grounds for condonation of late filing and appeal bearing ITA 1562/KB/2023 after a considerable period of time and after expiry of the scribed time of 60 days as provided u/s.131(4) of the Income Tax Ordinance, 2001 before this forum on the basis of grounds/additional grounds as mentioned in the memo of applications.

3. We perused the record, carefully examined the impugned orders and have gone through the case law relied upon by the AR while having considered the arguments put-forth by the rival parties. Our observations and findings are as under:

- i) The A/DCIR finalized the order u/s.122(5A) of the Income Tax Ordinance, 2001 vide Bar Code No.100000091821026 dated 29-01-2021.
- ii) The CIR(A) passed the order vide Bar Code No.100000126988959 dated 14-07-2022.
- iii) The Applicant does not deny or controvert the service of order through IRIS/electronic means as prescribed under clause (d) of sub-section (1) of Section 218 of the Income Tax Ordinance, 2001. Hence it cannot be said that the taxpayer had no knowledge of the impugned order, since by the admission of electronic service, constructive awareness of the order will be inferred unless substantial evidence to rebut this inference is brought on record, which as a fact of the matter has not been brought on record by the taxpayer.

The frequent access of the web-portal and the incidental awareness of the orders passed against the Taxpayer are clearly made out from the factual

observations made above unless concrete evidence to the contrary is provided which has not been presented before us. Hence the predominant impression that arises is that the Taxpayer had full awareness of the order and still showed negligence and lack of diligence in filing the appeal in time, which actions not being excusable, negligence cannot be condoned by us.

- iv) In absence of any plausible explanation being rendered to justify the delay of 281 days in filing of appeal, the appeal is and shall remain barred by time and not maintainable as a consequence thereof. Reliance in this regard is placed on a reported judgment of Honorable Sindh High Court reported as PLD 2020 Sindh 136. The Honourable Sindh Court in the judgment has held as under:

"It is a settled proposition of law that law helps the vigilant and not the indolent and after the expiry of the limitation period a vested right is always created in favour of the other side. Reference in this regard may be made to the decisions given by the Hon'ble Supreme Court of Pakistan in the cases of Muhammad Nawaz and 3 others v. Mst. Sakina Bibi and 3 others (1974 SCMR 223) and Central Board of Revenue, Islamabad through Collector of Customs. Sialkot Dry Port, Samberial District Sialkot and others v. Messrs Raja Industries (Pot.) Ltd. through General Manager and 3 others (1998 SCMR 307). Once limitation starts it could only be condoned after considering valid and cogent reasons for the same. Matter has been examined minutely by us, however, unfortunately the factors for condoning the delay are totally lacking in the instant matter. It is also a settled proposition of law that delays are condoned when reasonable and plausible reasons for the same are given but a perusal of the affidavit and the application clearly demonstrate that neither plausible reasons nor justification have been given for filing the HCA late, rather, there is, in fact, no ground either in the affidavit or in the application justifying the cause of delay. It is also a settled proposition of law that it is the bounden duty of the Court to dismiss a lis before it if the same is barred by limitation and no plausible explanation has been furnished, with regard to such delay. We need not to cite decisions or case law on the above legal propositions since the same are quite settled by now"

4. In addition to above, we are of the view that object of law of limitation was to help the vigilant and not the indolent. The party/applicant should explain each and every day of delay in filing of References/appeals in the following observations:

2023 PTD 56 (H.C.Pesh)

"S.86(2) --Limitation Act (IX of 1908), S.5--Sales Tax on services--Reference to High Court--Limitation--Condonation of delay--Sales Tax Reference was filed beyond stipulated period of sixty days--Order in question was passed on 12-04-2022, certified copy was issued to authorities on 15-04-2022, whereas Reference application was filed on 07-07-2022---Effect---Sales Tax Reference was barred by 24 days---Object of law of limitation was to help the vigilant and not the indolent---Law of limitation was required to be construed strictly---Each day of delay was to be explained by the party concerned---Government department could not be treated differently than private individual on the question of limitation---Authorities failed to

offer any plausible explanation for condonation of delay in their application---Negligence to file Sales Tax Reference must have its reward to punish the indolent---High Court declined to condone the delay in filing of Sales Tax Reference---Reference was dismissed in circumstances.”

2023 PTD 68 (H.C. Kar.)

"S. 196---Limitation Act (IX of 1908), S.5---Reference---Limitation--Condonation of delay--Government department, entitlement of--Force majeure---Authorities sought condonation of delay in filing of Reference on the plea of force majeure and misplacement of order of Customs Appellate Tribunal--Validity---Each day's delay was to be satisfactorily explained in time barred matters. No sufficient cause existed which prevented authorities in filing Reference in time---Issue of limitation was always a mixed question of law and fact and was to be decided on the ground of circumstances obtaining in the matter---Such reason for delay was not plausible. Government departments or autonomous bodies and their cases had to be dealt with in the same manner as that of an ordinary litigant citizen---High Court declined to condone the delay caused in filing of Reference by authorities--Reference was dismissed, in circumstances.

2022 PTD 1103 (H.C. Lah.)

"S. 67-A---Limitation Act (IX of 1908), S. 5--Qanun-e-Shahadat (10 of 1984), Art. 129(e)--Reference to the High Court---Limitation--condonation of delay-Sufficient cause--Presumption as to judicial proceedings--- scope---Applicant assailed order passed by Appellate Tribunal after 691 days and claimed that the impugned order was not Communicated by the Appellate Tribunal--Held, that applicant had not contended that the order was reserved or was kept in waiting for orders nor had the applicant made any effort to ascertain as to whether the order was passed by the Appellate Tribunal--No document was produced by the applicant to show that the copy of impugned order was not sent to it-Presumption of correctness was attached to the judicial proceedings in terms of Art. 129(e) of the Qanun-e-Shahadat, 1984 and in order to displace the same, some evidence was required to be produced by the applicant along with application for condonation so as to make out a case for condonation of delay --Delay in filing proceedings could not be condoned lightly unless it was shown that there were sufficient reasons for causing the delay-Law of Limitation reduced on effect of extinguishment of a right of party when significant lapses occurred and when no sufficient cause of such lapses, delay or time-barred action was shown by defaulting party, the opposite party was entitled to a right accrued by such lapses---Negligence did not constitute sufficient cause to condone delay---Party seeking advantage of S. 5 of Limitation Act, 1908 must satisfy the Court that it had not been negligent and had been pursuing the case with due diligence and care---Reference application was time barred and the application for condonation of delay had not disclosed any cogent, convincing and justified reason for condonation of delay---Reference application was dismissed.”

2020 SCMR 246 (S.C)

"S. 196--Limitation Act (IX of 1908), S. 5---Reference to High Court--. Barred by eleven months--Condonation of delay--Grounds---Illness of special attorney --Not plausible or convincing ground---After dismissal of his appeal before the Appellate Tribunal, the petitioner waited for eleven months to file the Customs Reference before the High

Court, which was hopelessly barred by time---Application for condonation of delay stated that the entire process was followed up by a special attorney of the petitioner---Said special attorney was allegedly a chronic patient of some disease and was therefore unable to file the Reference within time--Petitioner was unable to explain plausibly why he did not pursue the matter himself and why was he not following up the same--. Plea/explanation that petitioner was not available and his special attorney was unwell were neither convincing nor plausible and did not constitute sufficient grounds for condonation of delay for about eleven months--Petition for leave to appeal was dismissed and leave was refused."

5. On the basis of deliberation made supra, our considered view is that the appeal is barred by time. The condonation application along with additional grounds is hereby rejected and the main appeal is held to be hit by limitation, therefore dismissed in limine on this point alone.

6. The condonation application, additional grounds application and appeal are disposed off as above."

Prima facie the appeal has been dismissed on account of being time bared. The application seeking for delay to be condoned was rejected and the ground that are stated in the body of the impugned order. It is primary contention of the applicant that the matter ought to be decided on merit primarily and not to be non-suited for non-compliance of legal technicalities / procedural grounds.

It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation otiose¹. The Superior Courts have consistently maintained that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard². The Superior Courts have held that proceedings barred by even a day could be dismissed³; once time begins to run, it runs continuously⁴; a bar of limitation creates vested rights in favour of the other party⁵; if a matter was time barred then it is to be dismissed without touching upon merits⁶; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁷. It has been maintained by the honorable Supreme Court⁸ that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. It is pertinent to observe that the preponderant bar of limitation could not be dispelled by the applicant. Since no question of law has been articulated, therefore, the reference application is dismissed.

¹ Mehmood Khan Mahar vs. Qamar Hussain Puri & Others reported as 2019 MLD 249

² Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others reported as 2004 CLD 732

³ 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82

⁴ Shafaatullah Qureshi vs. Pakistan reported as PLD 2001 SC 142; Khizar Hayat vs. Pakistan Railways reported as 1993 PLC 106

⁵ Dr. Anwar Ali Sahito vs. Pakistan reported as 2002 PLC CS 526; DPO vs. Punjab Labour Tribunal reported as NLR 1987 Labour 212

⁶ Muhammad Tufail Danish vs. Deputy Director FIA reported as 1991 SCMR 1841; Mirza Muhammad Saeed vs. Shahabudin reported as PLD 1983 SC 385; Ch Muhammad Sharif vs. Muhammad Ali Khan reported as 1975 SCMR 259

⁷ WAPDA vs. Aurangzeb reported as 1988 SCMR 1354

⁸ Lt. Col. Nasir Malik vs. ADJ Lahore & Others reported as 2016 SCMR 1821; Qamar Jahan vs. United Liner Agencies reported as 2004 PLC 155

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

Khuro/PS