

# HIGH COURT OF SINDH, KARACHI

**1. C.P NO.D-3048/2010**

M/s Shell Pakistan vs. Federation Of Pakistan & others.

**2. C.P.No.D-2061/2010**

PKP Kirthar 2BV vs. Federation of Pakistan & thers

**3. C.P.No.D-2180/2010**

M/s International Advertising (Pvt) Ltd. vs. Additional Commissioner  
Inland Revenue & others.

**4. C.P.No.D-2643/2010**

National Bank of Pakistan vs. Federation of Pakistan & others

**5. C.P. No.D-2648/2010**

M/s Citi Bank NA Pakistan vs. Addl. Commissioner Inland Revenue  
& ors.

**6. C.P. No.D-3496/2010**

M/s Engro Foods Ltd. vs. Addl. Commissioner Inland Revenue & Ors.

**7. C.P. D-3624/2010**

Siemens Pakistan Engineering Co. Ltd. vs. Addl. Commissioner Inland  
Revenue & ors.

**8. C.P.D-3625/2010**

Siemens Pakistan Engineering Co. Ltd. vs. Addl. Commissioner Inland  
Revenue & ors.

**9. C.P. No.D-11/2011**

M/s BASF Chemicals Polymers & Co. vs. Addl. Commissioner Inland  
Revenue & ors.

**10. C.P. No.D-12/2011**

M/s BASF Chemicals Polymers & Co. vs. Addl. Commissioner Inland  
Revenue & ors.

**11. C.P.No.D-229/2011**

M/s Jehangir Siddiqui & Co. vs. Addl. Commissioner Inland  
Revenue & Ors.

**12. C.P. No.D-3582/2011**

M/s Pak Libya Holdings & Co. vs. Addl. Commissioner Inland  
Revenue & Ors.

**13. C.P.No.D-3953/2011**

M/s DHL Pakistan (Pvt) Ltd. vs. Addl. Commissioner Inland  
Revenue & Ors.

**14. C.P.No.D-3954/2011**

M/s DHL Pakistan (Pvt) Ltd. vs Addl. Commissioner Inland  
Revenue & Ors.

**15. C.P.D-231/2012**

Dawood Engineering (Pvt) Ltd. vs. Fed. Of Pakistan & Ors.

**16. C.P. No.1866/2010**

M/s Premier Insurance Co. vs. Addl. Commissioner Inland

Revenue & Ors.

**17. C.P.No.D-1867/2010**

M/s Shell Pakistan Ltd. vs. Addl. Commissioner Inland

Revenue & Ors.

**18. C.P.No.D-1498/2012**

M/s HSBC Bank Middle East Ltd. vs. Addl. Commissioner Inland

Revenue & Ors.

**19. C.P.No.D-2705/2011**

M/s Standard Chartered Bank vs. Addl. Commissioner Inland  
Revenue & Ors.

**20. C.P.D-1806/2010**

KASB Capital Funds Ltd. vs. Addl. Commissioner Inland  
Revenue & Ors.

**21. C.P.No. D-1924/2010**

M/s Pfizer Pakistan Ltd. vs. Addl. Commissioner Inland  
Revenue & Ors.

**22. C.P.No. D-1946/2010**

M/s HBL vs. Addl. Commissioner Inland  
Revenue & Ors.

**23. C.P.No.D- 1947/2010**

M/s HBL vs.

Addl. Commissioner Inland

Revenue & Ors.

**24. C.P.No. D- 2001/2010**

M/s Pak Libya Holdings vs. Addl. Commissioner Inland

Revenue & Ors.

**25. C.P.No. D-2002/2010**

M/s Pak Libya Holdings vs. Addl. Commissioner Inland

Revenue & Ors.

**26. C.P.No.D-2003/2010**

M/s Pak Libya Holdings vs. Addl. Commissioner Inland  
Revenue & Ors.

**Present: Mr. Justice Faisal Arab**

**Mr. Justice Nadeem Akhtar**

Dates of hearing. 24.04.2010, 25.04.2010, 26.04.2010, 03.05.2010,  
04.05.2010 and 07.05.2010.

Mr. Muhammad Farogh Naseem, Advocate.

M/s Naveed Andrabi and Anwar Kashif, Advocates

Mr. Saleem Mangrio, Advocate

Mr. Chaman Lal, Advocate,

Mr. Muhammad Usman, Advocate

Dr. Tariq Masood, Additional Commissioner.

M/s Muhammad Altaf Mun, Javed Farooqi, Kafeel Abbasi Advocates.

Mr. Ashfaq Ahmed Tagar, DAG.



**FAISAL ARAB, J:** After scrutinizing the tax returns of the petitioners for the tax year 2007, the Additional Commissioners Inland Revenue of the concerned divisions served separate notices on each of the petitioners under Section 122 (5A) of the Income Tax Ordinance, 2001. Such notices were issued as it was considered that assessment orders, treated to have been made under Section 120 (1) of the Income Tax Ordinance, 2001, were erroneous and prejudicial to the interest of the revenue. The reasons for holding so against each of the petitioners in these connected cases were disclosed in the notices served upon them.

2. The common grievance of each of the petitioners in these connected cases is that once a return of income is filed by a taxpayer under Section 114 of the Ordinance and has been taken as assessment order of Commissioner Inland Revenue under the provisions of Section 120 of the Income Tax Ordinance 2001 then Additional Commissioner Inland Revenue who is subordinate to Commissioner Inland Revenue is not competent to make amendments in the return of income under Section 122 of the said Ordinance.

3. Mr. Farogh Naseem learned counsel appearing for several petitioners argued that under Sections 122 and 122A of the Income Tax Ordinance power to amend and revise a tax return filed by a taxpayer lies with the Commissioner Inland Revenue and when a tax return filed under the provisions of Section 114 of Income Tax Ordinance, 2001 is already taken as assessment of taxable income made by Commissioner Inland Revenue himself as envisaged under Section 120 of the said Ordinance then the same cannot be

amended by an Additional Commissioner Inland Revenue who is an officer subordinate to Commissioner Inland Revenue. He elaborated his argument by stating that as an officer lower in rank cannot sit in appeal over the decisions of his superiors, the provisions of Section 209 and 210 of the Income Tax Ordinance, 2001 whereby powers of Commissioner Inland Revenue can be delegated to his subordinate officers may not be allowed to create such anomalous situation, therefore, to these provisions the principle of 'reading down the law' be applied and interpreted so that officer of a lower rank may not be able to sit in judgment over an assessment order treated to have been made by his superior. He submitted that the provisions of Section 209 and 210 of the Income Tax Ordinance, 2001, be given contextual interpretation i.e. confined for delegating only administrative work. He argued that provisions of delegation of power were exercised in a manner which work against the due process of law. He contended that when power to amend a tax return vests in the Commissioner Inland Revenue only under Section 122 of the said Ordinance and the Commissioner being *persona designata* his work cannot be assigned to any other functionary. Mr. Farogh Naseem also argued that delegation of powers by the Commissioner Inland Revenue to Additional Commissioner Inland Revenue amounts to abdication of his powers which are specifically conferred on him and, therefore, to be exercised only by the Commissioner Inland Revenue and not by his delegatee. Mr. Farogh Naseem also read Sections 55, 61, 62, 65, 66A and 132 of Income Tax Ordinance 1979 to demonstrate that each higher step in dealing with a return of income under the repealed law was taken by an officer who was higher in rank whereas in the present case assessment order which is deemed to have been made by Commissioner Inland Revenue under Section 120 of the Income Tax Ordinance, 2001 is sought to be amended by an Additional Commissioner Inland Revenue who is his subordinate officer. Mr. Farogh Naseem also referred to Articles 3, 4 and 10-A of the Constitution of Islamic Republic of Pakistan and relied upon the cases reported in 1991 SCMR 2223, PLD 1988 SC 53, 2011 PTD 2128, PLD 1992 SC 485, 1993 SCMR 1232, 1990 MLD 1912,

PLD 1962 L 887, PLD 1965 SC 459, 1987 CLC 1109, 2005 CLC 922, 2002 PTD 7, 2006 SCMR 1410, PLD 2012 SC 1, PLD 1966 Page 287, PLD 1964 L 539, PLD 1985 K 572, PLD 2001 SC 1, PLD 2010 SC 265, PLD 1961 SC 119, 2001 SCMR 103, 1995 PTD 741, 2001 PTD 2484, PLD 1997 SC 582, 2003 MLD 777, PLD 2009 L 268 and 2010 PTD 1506.

4. Mr. Naveed Andrabi who also appeared on behalf of some of the petitioners argued that authority which amends or revises an assessment order should be superior in rank but in the present case assessment order of a superior officer is being sought to be amended by an officer who is lower in rank which is not permissible under any principle of law. Mr. Andrabi relied upon cases reported in PLD 1970 SC 75, PLD 1983 SC 53, PLD 1986 SC 88, 2001 PTD 1467, 1984 PTD 137 and PLD 1992 SC 549. Mr. Ali Armani who also appeared for some of the petitioners adopted the arguments advanced by Mr. Farogh Naseem and Mr. Naveed Andrabi.

5. On the other hand, Dr. Tariq Masood, Additional Commissioner, Federal Board of Revenue, appeared to represent Income Tax Department. He argued that Income Tax Ordinance is a complete code in itself and provides complete procedure for the filing, assessment, amendment and revision of return of income. He submitted that all these stages revolve around the office of the Commissioner Inland Revenue which he under the law can either perform himself or in his name by his delegatee i.e. an Additional Commissioner Inland Revenue. He stated that under the provisions of Section 209 and 210 read with Sections 2 (13) and 211 of the Income Tax Ordinance, 2001, powers and functions of a Commissioner Inland Revenue can be delegated to his subordinates and thus powers and functions of Commissioner Inland Revenue trickle down to his subordinates. He argued that power of delegation emanates

not solely on account of discretion exercised by Commissioner Inland Revenue but on the strength of the provisions of Income Tax Ordinance 2001 itself. He next submitted that Additional Commissioner Inland Revenue while amending a tax return under the provisions of Section 122 of the Income Tax Ordinance is not reviewing an assessment of income which the Commissioner Inland Revenue has made by application of his mind but Additional Commissioner is scrutinizing the same which is a first attempt by any Tax official to do so as no officer of the tax department had earlier scrutinized a return of income and come to a definite conclusion. In support of his arguments Dr. Tahir Masood relied upon the cases reported in 63 TAX 163 SC, 66 TAX 156 SC, PLD 1965 SC 459, 178 ITR 31, 254 ITR 337, 194 ITR 539, 189 ITR 741, 2012 PTD 130 and 69 TAX 32.

6. Mr. Chamanlal and Mr. Jawaid Farooqui, Mr. Kafeel Abassi and Mr. Mohsin Imam argued that under the provisions contained in Sections 209, 210 and 211 of the Income Tax Ordinance, 2001, the powers and functions of the Commissioner Inland Revenue are exercised by Additional Commissioners Inland Revenue and such exercise is deemed to have been undertaken by the Commissioner Inland Revenue. Hence it was contended that the amendments made to a return of income by Additional Commissioner Inland Revenue are to be treated as if made by the Commissioner Inland Revenue himself. If this is not allowed then the whole machinery to scrutinize returns of income will be seriously crippled and become ineffective. Reliance was placed upon cases reported in 1999 SCMR 745 and AIR 1948 Allahabad 129.

7. Mr. Andrabi in reply to the arguments of respondents' counsel argued that power which is exercised under Section 122(5A) of the Income Tax Ordinance, 2001, is not a power to review an assessment of taxable income as

provided under Section 66 of the repealed Income Tax Ordinance, 1979 but is a power to amend it which is already deemed to have been assessed by the Commissioner Inland Revenue and, therefore, power under the provisions of Section 122 (5A) could though be exercised but only by an officer higher in rank to the Commissioner Inland Revenue whereas in the instant cases it is being done not even by Commissioner Inland Revenue himself but by Additional Commissioners Inland Revenue who are subordinate to Commissioner Inland Revenue. He submitted that there is thus clear error of law which can be corrected by this Court in its Constitutional jurisdiction. In support of his contentions he relied upon the cases reported in 2006 PTD 734, 2009 SCMR 1279, 2001 PTD 1472, 2009 CLD 257 and 2010 PTD 1506.

8. Part I of Chapter X of the Income Tax Ordinance deals with the filing of the income tax returns and Part II of the said Chapter with their assessments. Section 114 (2) of the said Ordinance narrates the procedure that a taxpayer has to follow in filing of his tax return. Section 120 (1) of the said Ordinance provides that when a taxpayer files a tax return and it is complete in all respects then the same shall be taken to be assessment of taxable income made by the Commissioner Inland Revenue. In other words, a complete tax return upon its filing becomes assessment order of the Commissioner Inland Revenue. Under the present dispensation, mere filing of tax return is taken as assessment order made by the Commissioner Inland Revenue but that does not mean that the function of the Commissioner Inland Revenue to further deal with the tax returns comes to an end. It is well within his powers and functions to scrutinize any tax return as he deems fit. He can amend the same after issuing due notice to the taxpayer and giving him an opportunity of hearing. The power of the Commissioner Inland Revenue to amend a tax return emanates from the provisions of Section 122 of the Income Tax Ordinance, 2001, though mere filing of the tax return is taken as assessment of taxable

income made by the Commissioner Inland Revenue himself as provided in section 120 of the Income Tax Ordinance, 2001. When we read provisions of Income Tax Ordinance, 2001, it becomes evident that all stages of dealing with a tax return such as assessment, scrutiny, amendment, revision or audit revolve around one and the same office i.e the office of the Commissioner Inland Revenue. Thus a complete deviation from the previous law was made in this regard under the Income Tax Ordinance, 2001.

9. The practical aspects of scrutinizing tax returns have also been taken care of while drafting the Income Tax Ordinance, 2001. Scrutiny of hundreds and thousands of tax returns is a time consuming job. A taxpayer may have evaded a tax liability or a tax might have been short paid. Lot of clarifications and examinations of documents may be required for which taxpayer is to be called and hearings are to be held. To effectively and efficiently deal with such a situation, it was considered that the powers and functions of the Commissioner Inland Revenue can be delegated to an officer subordinate to him. This object was achieved under the provisions of Section 209, 210 read with Sections 2(13) and 211 of the Income Tax Ordinance, 2001, which read as under:-

**209. Jurisdiction of income tax authorities.—(1)**  
.....

(2) *The {Board} or the {Chief Commissioner} may, by an order, confer upon or assign to any {officer of Inland Revenue} all or any of the powers and functions conferred upon or assigned to the Commissioner, under this Ordinance, in respect of any person or persons or classes of persons or areas {as may be specified in the order}.*

(3) *An order under sub-section (2) by the {Chief Commissioner} shall be made only with the approval of the {Board}.*

(4) The {officer of Inland Revenue} referred to in sub-section (2) shall, for the purpose of this Ordinance, be treated to be the Commissioner.

- (5) .....
- (6) .....
- (7) .....
- (8) .....
  
- (9) .....

**210. Delegation.**—(1) The Commissioner {subject to sub-section (1A) may, by an order in writing, delegate to any {officer of Inland Revenue, subordinate to the Commissioner} all or any of the powers or functions conferred upon or assigned to the Commissioner {subject to sub-section (1A),} under this Ordinance, other than the power of delegation.

(1A) The Commissioner shall not delegate the powers of amendment of assessment contained in sub-section (5A) or section 122 to (an officer of Inland Revenue below the rank of Additional Commissioner Inland Revenue.

(1B) .....

**211. Power and function exercised.**—(1) Where, by virtue of an order under section 210, {an Officer of Inland Revenue} exercises a power or performs a function of the Commissioner, such power or function shall be treated as having been exercised or performed by the Commissioner.

(2) The exercise of a power, or the performance of a function, of the Commissioner by {an Officer of Inland Revenue} shall not prevent the exercise of the power, or the performance of the function, by the Commissioner.}

**2. Definitions.**—In this Ordinance, unless there is anything contained in the subject or context—

(1) to (12) .....

(13) **“Commissioner”** means a person appointed as Commissioner Inland Revenue under section 208 and includes any other authority vested with all or any of the powers and functions of the Commissioner;}

10. When we read the definition and meaning of the Commissioner Inland Revenue as provided under Section 2(13) of the Income Tax Ordinance, 2001, it includes not only the Commissioner, Inland Revenue appointed under Section 208 of the Ordinance but also includes an officer of Inland Revenue who has been delegated all or any of the powers and functions of the Commissioner Inland Revenue. Under Section 211 of the Ordinance the delegatee's acts are to be taken as if performed by the Commissioner Inland Revenue himself. Hence the task of the Commissioner Inland Revenue can be entrusted to Additional Commissioners Inland Revenue who upon delegation of authority exercise same powers and functions as are vested in the Commissioner Inland Revenue and are to be taken as if exercised by the Commissioner himself. The powers of Commissioner Inland Revenue are delegated to Additional Commissioners as they are also considered competent enough to do deal with the work assigned to them. This power is exercised by the Federal Board of Revenue or the Chief Commissioner Inland Revenue under Section 209 (2) of the Income Tax Ordinance, 2001 and by a Commissioner Inland Revenue under Section 210 of the said Ordinance. Thus the powers of delegation of authority under Sections 209, 210 are invoked out of sheer need of the Income Tax department as scrutiny of tax returns, which is an onerous and time consuming task needs a lot of man-hours and application of mind which cannot be completed within reasonable time if left only to be done by the Commissioners Inland Revenue. Hence we find no force in the contention of the petitioner's counsel that delegation of powers by Commissioner Inland Revenue to Additional Commissioner Inland Revenue amounts to abdication of his powers.

11. The whole grievance of the petitioner in the instant case is that once a tax return is filed by a taxpayer under Section 114 of the Ordinance and has



been taken as assessment order of the Commissioner Inland Revenue under the provisions of Section 120 (1) of the Income Tax Ordinance 2001 then how could an officer subordinate to the Commissioner Inland Revenue could revise it. This argument would have been attractive in a situation where power of delegation as discussed above did not exist under the provisions of the Income Tax Ordinance, 2001 and a subordinate officer sits in appeal over a return of income that has already been assessed by application of mind by an officer higher in rank to him. It may be seen that through deeming provisions of Section 120 (1) of the Income Tax Ordinance filing of a return of income is taken as assessment of income made by Commissioner Inland Revenue only for the reason that each and every return of income need not be physically assessed by the Commissioner Inland Revenue by application of his mind. Thus provisions of Section 120(1) are provisions of convenience. The Commissioner Inland Revenue on his part may select certain number of returns of income either randomly or based on certain information and scrutinize them. As scrutiny of returns of income needs lot of man hours, whenever the Commissioner Inland Revenue feels that he may not be able to cope with the workload of scrutiny he may decide to share his work with his Additional Commissioners by exercising power of delegation provided under Section 210 of the Income Tax Ordinance, 2001. Thus through delegation of powers under Sections 209 and 210 read with Sections 2(13) and 211 of the Income Tax Ordinance, 2001 an officer subordinate to the Commissioner Inland Revenue becomes authorized to scrutinize returns of income.

12. In spite of specific provisions of delegation of powers and functions if we accept the argument of the petitioners and hold that Additional Commissioner Inland Revenue cannot exercise powers and functions of the Commissioner Inland Revenue it would render the provisions of delegation of powers and functions as contained in Sections 209 & 210 of the Income Tax Ordinance,

2001 absolutely redundant. Redundancy cannot be attributed to any provision of the statute unless it does not fit in the whole scheme of the Ordinance. We did not even find any ambiguity in interpreting these provisions of delegation of powers so as to reach a different opinion. These provisions of Income Tax Ordinance contain power of delegation in simple words. How could we ignore the provisions of Sections 209 and 210 read with Sections 2(13) and 211 of the Income Tax Ordinance, 2001 which are staring at our faces? Then in our view the power of delegation when exercised does not in any manner cause any prejudice to any of the rights of a taxpayer that have been preserved under other provisions of the Income Tax Ordinance or under any other principle of law. When the legislature treats Additional Commissioner Inland Revenue to be competent enough to scrutinize tax returns then such intent cannot be made redundant by holding that the work of scrutinizing, amending and revising tax returns and conducting hearings of the taxpayers can only be undertaken by the Commissioners Inland Revenue who are far less in numbers than the Additional Commissioners. Each Commissioner Inland Revenue has been assigned a particular area described as "Division" and several Additional Commissioners Inland Revenue work under him. The area of a particular Division is further sub-divided into ranges and then a range is assigned to each Additional Commissioner. By exercising power of delegation as provided under Section 210, the Commissioner Inland Revenue distributes work of a particular range to Additional Commissioners Inland Revenue, who within the range assigned to them, perform the same function and exercise same powers as conferred upon them by the Commissioner Inland Revenue under the Income Tax Ordinance, 2001. In this manner the work of the Commissioner Inland Revenue of a particular Division is shared by several Additional Commissioners Inland Revenue for effective and expeditious scrutiny of returns of income and recovery of evaded or unpaid taxes is made possible. While appointing Additional Commissioners Inland Revenue the competent authority must have found them qualified enough to perform the task of scrutinizing tax returns. How a taxpayer could question such a decision

and why should a Court of law substitute the decision of the tax authorities backed by legislative provisions with that of its own. It is purely an administrative decision backed by provisions of the Income Tax Ordinance, 2001 which should be left to the Income Tax Authorities to decide without outside interference.

13. When a return of income is filed under the provisions of Section 114 of the Income Tax Ordinance, 2001 and is taken to be an assessment of taxable income made by Commissioner Inland Revenue under the provisions of Section 120(1) of the said Ordinance then at that stage no one from the tax authorities has scrutinized it by applying his mind. The application of mind to a return of income starts when it is sought to be amended by the tax authorities under Section 122 of the Income Tax Ordinance, 2001. The entire exercise of amendment is to be carried out either by Commissioner Inland Revenue himself or the task could be entrusted to Additional Commissioner Inland Revenue by virtue of Sections 209 and 210 read with Sections 2(13) and 211 of the said Ordinance. Thus the application of mind to a tax return for the first time comes when the provisions of Section 122 of the Income Tax Ordinance, 2001 are invoked and when it is done by Additional Commissioner Inland Revenue as a delegatee of Commissioner Inland Revenue then it cannot be said that Additional Commissioner Inland Revenue is sitting in appeal over the assessment of taxable income already made by application of mind by the Commissioner Inland Revenue.

14. If we accept the arguments of petitioners' counsel then it would also mean that we should restrain the scrutiny of tax returns to be carried out for the first time by the tax authorities in case it is carried out by the office of Additional Commissioner Inland Revenue. This would mean to totally nullify the provisions pertaining to delegation of powers as defined and contained in Sections 2(13), 209, 210, 211 of the Income Tax Ordinance, 2001. When under Section 120(1) of the Income Tax Ordinance, 2001 through fiction of law filing of a return of income is taken to be assessment order of the Commissioner Inland Revenue then why not through fiction of law as contained in Section 211(1) of the said Ordinance, exercise of powers of Commissioner Inland Revenue by Additional Commissioner Inland Revenue are taken as if exercised by the Commissioner Inland Revenue himself.

15. We have already discussed that limiting the exercise of powers and functions of Commissioner Inland Revenue to him only would result in curtailing the capacity of the tax department. If we accept the argument of the petitioners' counsel it would do nothing but hamper effective detection of tax evasion. It is no concern of the taxpayers as to how the tax department structures its machinery of tax collection. Not even any inconvenience would be caused to a taxpayer when the procedure of scrutiny of tax return provided in the Income Tax Ordinance, 2001 is carried out by Additional Commissioner Inland Revenue. On the contrary if function of making amendments to tax returns is left to the Commissioners Inland Revenue only, who are far less than Additional Commissioners Inland Revenue, it would consume a lot of time to finalize scrutiny of tax returns. The capacity to effectively finalize scrutiny would be tremendously curtailed. In our view inconvenience would be caused to an honest taxpayer as his return when selected for scrutiny would take lot

more time to finalize and he might be dragged for hearing on lot more occasions.

16. We find no legal infirmity in any provision of the Income Tax Ordinance, whereby the powers and functions of the Commissioner Inland Revenue are delegated to Additional Commissioners Inland Revenue.

17. We, therefore, hold that the impugned notices were validly issued by the Additional Commissioners Inland Revenue under Section 122 of the Income Tax Ordinance, 2001. The petitioners are directed to respond to the same within 30 days of this order failing which law shall take its own course.

18. Once we have decided in these petitions that the Additional Commissioners Inland Revenue are competent enough to issue notices to the taxpayers under Section 122 of the Income Tax Ordinance, 2001, we need not have to go into any other question as such matters are to be contested before the forum provided under Income Tax Ordinance, 2001 and not under Constitutional Jurisdiction of this Court.

19. Vide short order dated 07.05.2012 all these connected petitions were dismissed and these are the reasons for the same.

**JUDGE**

**JUDGE**

Dated: .03.2013

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