

Taxhelpline Case No. 152 of 2013

[LAHORE HIGH COURT]

T.R. No.45 of 2010, decided on 30th May, 2013

Before Syed Mansoor Ali Shah and Abid Aziz Sheikh JJ

Ch. Muhammad Asghar Saroha and Asif Rasool, Additional Commissioner Inland Revenue, Multan for Petitioner. Sh. Zafar-ul-Islam, Niaz Ahmad Khan and Tanveer Ahmad for Respondent

COMMISSIONER INLAND REVENUE---Petitioner

Vs

Ch. MUHAMMAD AKRAM---Respondent

JUDGMENT

SYED MANSOOR ALI SHAH, J.---The following questions of law have been raised in the instant reference:--

(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?"

(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?"

2. The learned counsel for the petitioner along with the departmental representative submits that the original assessment order of the respondent-assessee was made on 29-2-2007 (on the

filing of his return under section 120). Thereafter the respondent-assessee filed a revised return under section 114, hence the original assessment order stood amended on 26-4-2008 under section 122(3) of the Ordinance. Subsequently the assessment order was further amended on 12-1-2010. The contention of the department is that the learned Appellate Tribunal has erred in holding that further amendment in the original assessment order on 12-1-2010 was in violation of section 122(4) of the Ordinance.

3. It is contended that section 122(4) provides two separate and distinct timelines which are reproduced hereunder:--

Section 122(4) "Where an assessment order (hereinafter referred to as the "original assessment") has been amended under subsection (1)(3) or (5)' 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.
(emphasis supplied)

He submits that for amendment of an assessment order the "later of" the two timelines is available to the petitioner department. In the present case it is submitted that if the time is worked out in terms of section 122(4)(a), the period of five years from the "original assessment" dated 29-2-2007 expires on 29-2-2012, therefore, the amendment made on 12-1-2010 falls within the said timeline and is legally permissible.

4. Learned counsel for the respondent-assessee, on the other hand, submits that timelines given in section 122(4)(a) and (b) are two separate and distinct timelines. While one is applicable to the amendment of the original assessment order, the other is applicable to amended assessment orders, therefore, section 122(4)(b) is attracted to the case of the respondent as the original assessment order has already been amended in this case. He further submits

that as the last amended assessment order was on 26-4-2008, further amendment in terms of section 122(4)(b) could have been made within a period of one year from the said date which was not done in this case.

5. Arguments heard. Record perused.

6. The facts have been succinctly narrated above and need not be repeated. The question of law that surfaces in this case and requires determination is the scope and meaning of the timelines given in section 122(4)(a) and (b) of the Ordinance.

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 misreading 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 subsection (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.

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).

9. For the above reasons, the questions of law raised in this reference are decided in the above terms.

10. Copy of this order under the seal of the Court shall be dispatched to the learned Appellate Tribunal Inland Revenue in terms of section 133(5) of the Income Tax Ordinance, 2001.

Order accordingly

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