

(1)

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

PRESENT:

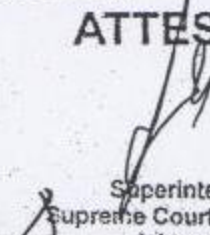
MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ
MR. JUSTICE GULZAR AHMED
MR. JUSTICE SH. AZMAT SAEED

**CIVIL APPEALS NO.1032 TO 1082 OF 2012 AND CIVIL
PETITIONS NO.1985-L TO 1987-L, 2013-L, 2014-L, 2036-L TO
2042-L, 2048-L TO 2052-L, 2072-L TO 2075-L, 2078-L, 2082-L,
2083-L, 2096-L TO 2099-L & 2107-L TO 2116-L OF 2012.**

(On appeal from orders, dated 10.5.2012 & 11.6.2012, passed by the Lahore High Court in W.Ps. No.398, 11874, 12071, 12096, 12522, 12730, 12949, 14295, 11949, 13007, 14466, 11861, 13758, 12792, 13270, 13642, 13720, 12097, 12326, 12951, 14047, 14049, 12543, 4859, 12806, 13409, 13529, 14019, 4069, 4125, 5136, 4603, 394, 608, 4261, 4605, 13005, 3023, 4608, 13740, 14287, 14460, 12598, 2274, 5336, 5854, 3770, 11891, & 12976, 2271, 2275, 2921, 5386, 2922, 847, 848, 12484, 3323, 4584, 5354, 5384, 6983, 1854, 4999, 6530, 7932, 2820, 3024, 7314, 7418, 7798 of 2012, 26415 of 2011, 7057, 2956, 3324, 6981, 7453 of 2012, 24210, 24213, 24215, 26414 of 2011, 1196, 3328, 4440, 6880, 3322 and 3325/2012, respectively)

1. CA.1032/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s Jamal Pipe Industries (Pvt) Ltd., Lahore.
2. CA.1033/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Azeem Cold Storage, etc.
3. CA.1034/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Pakistan Cricket Board (PCB), Lahore, etc.
4. CA.1035/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Premier Daires (Pvt) Ltd., etc.
5. CA.1036/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Zimpex (Pvt) Ltd., Lahore.
6. CA.1037/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Tricon Developers (AOP), Lahore.
7. CA.1038/2012. Commissioner Inland (Revenue), Lahore, etc.
Vs. M/s. Kold Karrier (Pvt) Ltd., Lahore.
8. CA.1039/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Lahore Electric Supply Company (LESCO)
through its Legal Director, etc.
9. CA.1040/2012. Commissioner Inland (Revenue), Lahore, etc.
Vs. M/s. Sufi Steel Industries (Pvt) Ltd., Lahore.
10. CA.1041/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. A.Z. Bashir (Fine Steel), etc.

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11. CA.1042/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Lahore Electric Supply Company Ltd.
(LESCO), etc.
12. CA.1043/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Allied Industries, Lahore.
13. CA.1044/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Pak Mughal Enterprises, Lahore.
14. CA.1045/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Haider Traders, Sialkot through its Proprietor.
15. CA.1046/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Shafi Spinning Mills Ltd, etc.
16. CA.1047/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Noor Textile Mills, Lahore, etc.
17. CA.1048/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Chemi Chloride Industries, Lahore, etc.
18. CA.1049/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Bismillah Calendaring Works, Lahore, etc.
19. CA.1050/2012. Commissioner Inland (Revenue), Lahore, etc.
Vs. M/s. Fawad Industries, etc.
20. CA.1051/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Sheikh Traders (AOP), Lahore.
21. CA.1052/2012. Chief Commissioner Inland (Revenue), Sialkot, etc.
Vs. Dr. Shahida Tariq.
22. CA.1053/2012. Chief Commissioner Inland (Revenue), Sialkot, etc.
Vs. Dr. Shahida Irfan.
23. CA.1054/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Chenone Stores Ltd., Lahore.
24. CA.1055/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Farooq & Brothers, etc.
25. CA.1056/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Descon Engineering Ltd, etc.
26. CA.1057/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Decent Computer, Lahore, etc.
27. CA.1058/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Silver Sales, Lahore.

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28. CA.1059/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Lahore Regency (Pvt) Ltd., Lahore, etc.
29. CA.1060/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. CAAs Rice Mills (AOP) through its
Managing Member.
30. CA.1061/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Honda Point (Pvt) Ltd., Lahore.
31. CA.1062/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Spell Chemicals, Lahore, etc.
32. CA.1063/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Maria B. Designs (Pvt) Ltd.
33. CA.1064/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Pak Pharmaceutical Packages (Pvt) Ltd., etc.
34. CA.1065/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Arshad Textile Mills (Pvt) Ltd.
35. CA:1066/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Chenab Engineering Works & Foundries (Pvt)
Ltd.
36. CA.1067/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Al-Fateh Industries, Lahore, etc.
37. CA.1068/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Majid Book Depot, Lahore, etc.
38. CA.1069/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Good Luck Floor Mills, Lahore.
39. CA.1070/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Shakeel Rubber Works, etc.
40. CA.1071/2012. Federal Board of Revenue through its Chairman, etc.
Vs. Tanzeel Mehdi, etc.
41. CA.1072/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Descon Engineering Ltd., etc.
42. CA.1073/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Al-Shahbaz Travels, etc.
43. CA.1074/2012. Federation of Pakistan through Chairman, FBR, etc.
Vs. M/s. S.B. Alliance (Pvt) Ltd., Lahore.
44. CA.1075/2012. Federal Board of Revenue through its Chairman, etc.
Vs. Dr. Umer Hayat Bucha.

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45. CA.1076/2012. Federal Board of Revenue through its Chairman, etc.
Vs. H.A.H. Traders Association, etc.
46. CA.1077/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Enormous Trading Company, etc.
47. CA.1078/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Hussain Leather Industries, etc.
48. CA.1079/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Green Land Engineering, etc.
49. CA.1080/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Al-Razi Hospital, etc.
50. CA.1081/2012. Federal Board of Revenue through its Chairman, etc.
Vs. Kamran Zahid.
51. CA.1082/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Eagle Agro Engineering Corp, etc.
52. CP.1985-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Tariq Auto Store.
53. CP.1986-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Islam Medical College (Pvt) Ltd., through its
Director.
54. CP.1987-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Mehr Cold Storage & another.
55. CP.2013-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. King Agro Centre & another.
56. CP.2014-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Al-Sharif Cold Storage & another.
57. CP.2036-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Sufi Tikka Kabab Shop & another.
58. CP.2037-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Defense Hotel & another.
59. CP.2038-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Ideal Rubber & Engineering & another.
60. CP.2039-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. 128 Securities (Pvt) Ltd., & another.
61. CP.2040-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Mubarik Medical Complex & another.

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- CP.2041-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Pharma Packages & another.
63. CP.2042-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Rawal Shoes & another.
64. CP.2048-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. National Zaree Industries & another.
65. CP.2049-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Mughal Steel (Defunct AOP) & another.
66. CP.2050-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Eden Construction (Pvt) Ltd.
67. CP.2051-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. Bhatti Farms (Pvt) & another.
68. CP.2052-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Nazar Muhammad Rice Mills & another.
69. CP.2072-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Malik Board & Paper Industries (Pvt) & another.
70. CP.2073-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. F.H. Awan Industries through its owner &
another.
71. CP.2074-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Zafar Rice Mills.
72. CP.2075-L/2012. The Chief Commissioner Inland Revenue & others
Vs. Muhammad Umer Farooq.
73. CP.2078-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. New Care Ways through its Proprietor.
74. CP.2082-L/2012. The Chief Commissioner Inland Revenue & others
Vs. Dr. Arshad Hamid & another.
75. CP.2083-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Bismillah Cold Storage & another.
76. CP.2096-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Paradise Ice Cream Factory through its owner.
77. CP.2097-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Kamal Industries (Pvt) & another.
78. CP.2098-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Niaz Muhammad & another.

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79. CP.2099-L/2012. The Chief Commissioner Inland Revenue & others
Vs. Sh. Zahid Mahmood.
80. CP.2107-L/2012. The Chief Commissioner Inland Revenue & others
Vs. M/s. Shama Exports (Pvt) Ltd., & another.
81. CP.2108-L/2012. The Chief Commissioner Inland Revenue & others
Vs. M/s. Image Garments (Pvt) Ltd., & another.
82. CP.2109-L/2012. The Chief Commissioner Inland Revenue & others
Vs. M/s. J.K. Fiber Mills Ltd., & another.
83. CP.2110-L/2012. The Chief Commissioner Inland Revenue & others
Vs. M/s. Usman Cloth Mills (Pvt) Ltd., & another.
84. CP.2111-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Al-Aziz Packages & Printings (Pvt) & another.
85. CP.2112-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Ahmed Straw Board Company & another.
86. CP.2113-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Murtaza Steel & General Mills (Pvt) Ltd., &
another.
87. CP.2114-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Eden Builders (AOP) through G.M. (Operations)
and another.
88. CP.2115-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Networth Securities Ltd., & another.
89. CP.2116-L/2012. Federal Board of Revenue through its Chairman, etc.
Vs. M/s. Capital Vision Securities (Pvt) Ltd., & another.

For the appellants/
petitioners:

Mr. Muhammad Ilyas Khan, Sr. ASC
Dr. M. Shamim Rana, ASC
Mr. Tasneem Amin, AOR with
Mr. Muhammad Aqil Usman, Member Legal, FBR
Mr. Asim Sana Naik, O.I.R., RTO
Mr. M. Khalid Gill, Inspector, Legal

For the respondents:

Mr. Shahbaz Butt, ASC
Ch. Anwar-ul-Haq, ASC
(in CAs.1032, 1052 to 1054, 1060, 1066, 1067, 1075 & 1076/2012)
Mr. Muhammad Iqbal Hashmi, ASC
(in CAs.1034, 1057, 1070 & 1080/2012)
Nemo (in remaining Civil Appeals)

Date of hearing:

N.R. (in Civil Petitions)
03.01.2013

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Superintendent

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.- These listed appeals by leave of this Court are directed against the judgments dated 10.05.2012 and 11.06.2012 of a learned Single Judge of the Lahore High Court, Lahore.

2. In the Leave Granting Order dated 24.10.2012, one of the questions noted by this Court was in respect of the maintainability for want of filing of ICA. It may be mentioned that in the impugned judgment, the learned High Court has concluded that Section 177(1) of the Income Tax Ordinance, 2001 and its first proviso offend against Articles 10-A, 18, 23 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973, however, while examining the vires of the law noted herein before, notice was not issued to the learned Attorney General under Order XXVII-A Rule 1 of the Civil Procedure Code, 1908, therefore, in view of the judgment of this Court, passed in the case of Federation of Pakistan and others v. Aftab Ahmed Khan Sherpao and others (PLD 1992 SC 723), non-compliance of the mandatory requirements under Order XXVII-A Rule 1 CPC renders the proceedings defective and the judgment a nullity.

3. At the same time, we enquired from the learned counsel for the appellants, whether the ICA was not competent? He candidly

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conceded that such Intra Court Appeals were maintainable but stated that this Court in the case of Commissioner of Income Tax and others v. M/s Media Network and others (PLD 2006 SC 787), has held non filing of the appeal, does not oust or abridge the jurisdiction of this Court on the said rule of practice can be dispensed with in special circumstances. In the instant cases the non-compliance of requirements of XXVII-A Rule 1 CPC had rendered the impugned judgment a nullity.

4. We agree with the learned counsel but at the same time, we are mindful of the objection of non issuance of notice to the learned Attorney General by the learned High Court could have been taken up as one of the question before the ICA Bench seized with the matter, which too could have itself issued a notice to the learned Attorney General because after admission of the ICA, the proceedings shall be considered to be in continuation of the proceedings before the learned Single Judge by way of first appeal. Striking down the provisions of law, being *ultra vires* the Constitution, obviously requires examination and interpretation of the provisions of the Constitution with the assistance of the learned Attorney General after due notice in terms of the provisions of Order XXVII-A Rule 1 CPC, therefore, the learned counsel for the appellants as well as the respondents in the appeals noted

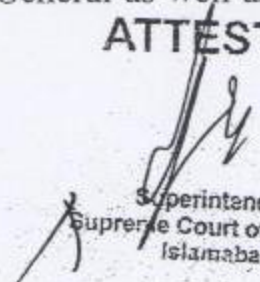
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hereinabove, agree that the instant appeals be sent back to the ICA Bench treating the same, as the appeals against the original order and for decision after issuing notice to the learned Attorney General in order to save the parties from the agony of protracted proceedings and also to ensure that further time is not consumed in the legal proceedings, as the question in the appeals, involves Public Revenue, therefore, the interest of both the parties would also be protected in this manner.

5. In some of the appeals, no one has appeared on behalf of the respondents nor there is a request for adjournment, therefore, we are left with no other option but to dispose of the same in their absence. In disposing of these cases in above terms, we are fortified by the judgments Muhammad Anis and others v. Abdul Haseeb and others (PLD 1994 SC 539) and Abrar-ul-Haq Shami, Deputy Secretary Establishment Division, Islamabad v. Federation of Pakistan and others (2012 SCMR 1292).

6. Thus, for the foregoing reasons, the Leave Granting Order dated 24.10.2012 is hereby rescinded. These appeals are sent to the ICA Bench for the purpose of deciding them, as Intra Court Appeals, after issuing notice to the learned Attorney General as well as to the parties accordingly.

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7. As, these matters are lingering on for the last so many years, therefore, it would be appreciated, if the same are disposed of expeditiously.

8. As far as Civil Petitions No.1985-L to 1987-L, 2013-L, 2014-L, 2036-L to 2042-L, 2048-L to 2052-L, 2072-L to 2075-L, 2078-L, 2082-L, 2083-L, 2096-L to 2099-L and 2107-L to 2116-L of 2012, are concerned, leave to appeal has not been granted, therefore, learned counsel for the petitioners stated that permission be accorded to withdraw these Civil Petitions so they may also file ICA in view of the observations made by this Court hereinabove subject to all just exceptions. Order accordingly.

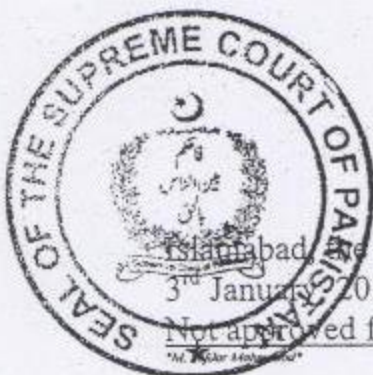
9. Thus, with the above observation these Civil Appeals as well as the Civil Petitions, stand disposed of, leaving the parties to bear their own cost.

Sd/- Iftikhar Muhammad Chaudhry, CJ
 Sd/- Gulzar Ahmed, J
 Sd/- Sh. Azmat Saeed, J.

Certified to be True Copy

[Handwritten Signature]
 14/1/13
 Superintendent
 Supreme Court of Pakistan
 Islamabad

255/13



3rd January 2013
 Not approved for reporting

[Handwritten Signature]
 12-1-13

GR No: _____ Civil/Criminal
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