

## Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE/  
RAWALPINDI BENCH, RAWALPINDI  
JUDICIAL DEPARTMENT

Case No: I.T.R.No.4/2012

Commissioner Inland  
Revenue

Versus

Islam ud Din, etc.

## JUDGMENT

Date of hearing	13.11.2012
Petitioner by	Mr. Manzoor Hussain, Advocate alongwith M/s Khalid Javed, Additional Commissioner and Farooq A. Nasir, Additional Commissioner.
Respondent No.1 by:	M/s Hafiz Muhammad Idrees, Advocate and Ch. Naeem-ul-Haq, Advocate.

Syed Mansoor Ali Shah, J:- The main question of law raised in this reference is "whether Section 122C inserted in the Income Tax Ordinance, 2001 through Finance Act, 2010 has a retrospective effect and can be applied to tax years prior to tax year 2011".

2. Learned counsel for the petitioner submits that the said provision is of a procedural nature, hence has a retrospective application. He placed reliance on the interpretation of the Statute by M. Mehmood (Page 256) and the case reported as West Punjab Province v. K.B. Amir-ud-Din and others (PLD 1953 Lahore 433) in support of his contentions. Learned counsel for the petitioner further submits that the term any tax year in Section 122C covers the previous years of tax also.

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3. Learned counsel for the respondent-assessee submitted that Section 122C is a substantive provision, inasmuch as, provisional assessment of the tax is made under this provision which is treated as a final assessment order after the expiry of 60 days. He has placed reliance on the under mentioned cases to submit that substantive amendment in law is always prospective unless specifically provided otherwise; Federation of Pakistan through Secretary Federal Board of Revenue, Islamabad and others v. New Ammur Industries, Lahore (2010) 101 Tax 193), Commissioner of Income Tax v. Eli Lilly Pakistan (Pvt.) Ltd. and other (2009) 100 Tax 81), Commissioner of Income Tax, Companies, Lahore v. Waheed Brothers (Pvt.) Ltd., Lahore (2007) 95 Tax 53), Honda, Shahrah-e-Faisal, Karachi and others v. R.C.I.T., Corporate Region, Karachi and others (2005) 91 Tax 474), Zakaria H.A. Sattar Bilwani and another v. I.A.C. of Wealth Tax, Karachi (2003) 87 Tax 113), Monnoo Industries Ltd. v. Commissioner of Income Tax, Central Zone, Lahore (2001) 84 Tax 86), Messrs Monnoo Industries Ltd. v. The Commissioner of Income Tax, Central Zone, Lahore (2001 PTD 1525), Commissioner of Income Tax v. Pakistan Tobacco Company Ltd., etc. (1988) 57 Tax 118) and Rustom F. Cowasjee and 2 others v. Central Board of Revenue and 2 others (1985) 52 Tax 123).

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5. Section 121 of the Ordinance as it stood prior to Finance Act, 2010 was as under:-

(a) furnish a return of income as required by a notice under sub-section (3) or sub-section (4) of section 114; or

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the Commissioner may, based on any available information or material and to the best of his judgment, make an assessment of the taxable income or income of the person and the tax due thereon.

6. After Finance Act, 2010, the following changes were made in Section 121:-

(a) deleted

7. Finance Act, 2010 also introduced Section 122C<sup>1</sup> which is reproduced hereunder for ready reference:-

“Provisional assessment: (1) Where in response to a notice under sub-section (3) or sub-section (4) of Section 114 a person fails to furnish return of income for any tax year, the Commissioner may, based on any available information or material and to the best of his judgment, make a provisional assessment of the taxable income or income of the person and issue a provisional assessment order specifying the taxable income or income assessed and the tax due thereon.

(2) Notwithstanding anything contained in this Ordinance, the provisional assessment order completed under sub-section (1) shall be treated as the final assessment order after the expiry of sixty days from the date of service of order of provisional assessment and the provisions of this Ordinance shall apply accordingly;

Provided that the provisions of sub-section (2) shall not apply if return of income alongwith wealth statement, wealth reconciliation statement and other documents required under

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<sup>1</sup> Section 122C inserted by the Finance Act, 2010 (XVI of 2010), reported as PTCL 2010 BS. 325. This amendment was effective from 5th June, 2010 by the declaration made under the Provisional Collection of Taxes Act, 1931 (XVI of 1931). Earlier this Section was inserted by the Finance (Amendment) Ordinance, 2010 (III of 2010), (Promulgated on 6th February, 2010), reported as PTCL 2010 BS. 173 & the Finance (Amendment) Ordinance, 2009 (XXII of 2009), (Promulgated on 28th October, 2009), reported as PTCL 2009 BS. 325.

sub-section (2A) of section 116 are filed by the person being an individual or an association of persons for the relevant tax year during the said period of sixty days.

Provided further that the provisions of sub-section (2) shall not apply to a company if return of income tax alongwith audited accounts or final accounts, as the case may be, for the relevant tax year are filed by the company electronically during the said period of sixty days."

8. Perusal of the above amendments shows that prior to the Finance Act, 2010, in case a person failed to furnish a return of income as per Section 120(a), the Commissioner on any available information or material and to the best of his judgment, would make an assessment of the person. Through Finance (Amendment) Ordinance, 2009 subsection (a) of Section 121 (1) was deleted and reinserted in the Ordinance in the shape of Section 122C which provides that if a person fails to furnish return of income for any tax year, the Commissioner, on any available information or material and to the best of his judgment, make a provisional assessment of the taxable income and issue a provisional assessment order specifying the taxable income or income assessed of the tax due thereon. Subsection (2) of Section 122C provides that after the expiry of sixty days from the date of service of order of provisional assessment, the provisional assessment order shall be treated as final assessment order. The proviso to the said subsection states that the final assessment order will not be made if return of income alongwith wealth statement, wealth reconciliation statement and

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other documents required under subsection (2A) of Section 116 are filed by the assessee for the relevant tax year during the period of sixty days.

9. Examination of the erstwhile Section 121 (1) (a) and Section 122C reveals that subsection (a) of Section 121 (1) has been shifted into an independent provision i.e., 122C. The change in the two provisions is that the assessment order has been divided into two parts; i.e., provisional assessment followed by final assessment after a period of sixty days. Section 122C therefore provides an additional facility to the assessee to furnish a return during the period of sixty days and if he does so, provisional assessment comes to an end. Learned counsel for the petitioner department supported this legal position and referred to Circular No.2 of 2010<sup>2</sup>. Under Section 121 (a), there is no provision of provisional assessment or final assessment. No such facility is available to the assessee under Section 121 (a) wherein final assessment is made without providing for provisional assessment or providing extra time

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<sup>2</sup> Following is an extract from FBR's Circular No.02 of 2010, dated July 22, 2010:- Newly added provisions of sub-sections (1) and (2) of section 122C are aimed at facilitation of a taxpayer where he fails to file return of income in response to requisition of the same by the Department. Under the new scheme of provisional assessment, in such cases of non-compliance, option shall be vested with the taxpayer even after finalization of (best judgment provisional assessment) to file a return within a period of sixty days of the service of demand notice resulting from provisional assessment. Such provisional assessment shall cease to have any legal effect if the taxpayer files return of income alongwith wealth statement, wealth reconciliation statement and other required documents, within a period of sixty days from the date of service of provisional assessment orders. However, a return filed in response to provisional assessment shall be valid only if accompanied with wealth statement, wealth reconciliation statement and explanation regarding source of assets in question. However, if the taxpayer fails to file return of income even after a period of sixty days of receipt of the demand notice resulting from a best judgment provisional assessment, such assessment shall attain finality on completion of a period of sixty days from the date of service of assessment order.

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(sixty days) to the taxpayer. We are, therefore, of the view that Section 122C is a beneficial legislation and is, therefore, retrospective in its application. Reliance is placed on State bank of Pakistan v. Messrs Faisal Spinning Mills Limited, (1997 SCMR 1244), Commissioner of Income Tax v. Shahnawaz Ltd. and others, (1993 SCMR 73), Dreamland Cinema, Multan v. Commissioner of Income Tax, Lahore, (1977) 35 Tax 169), Commissioner of Income Tax, Karachi v. Messrs B.R.R. Investment (Pvt.) Ltd. Karachi, (2011 PTD 2148), Commissioner Income Tax, Companies-I, Karachi v. N.I.T. Limited, (2010 PTD 553) and Circular No.02 of 2010 dated July 22, 2010. Further, application of Section 122C to the case of the petitioner does in no manner adversely affect the petitioner.


10. On the factual plane reading of the assessment order under section 122C dated 10.02.2010 for the Tax Year 2009 does not show whether the concerned tax officer passed a provisional assessment order leading to final assessment order under section 122C. This aspect needs to be verified by the Tribunal while hearing the case.


11. For the above reasons, the question of law raised before us is decided in the affirmative i.e., Section 122C of the Ordinance being a beneficial legislation has a retrospective application and the reference is disposed of.

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12. Office shall send a copy of this judgment under the seal of the Court to the learned Appellate Tribunal Inland Revenue as per Section 133 (5) of the Income Tax Ordinance, 2001.

  
(Muhammad Farrukh Irfan Khan) Judge

  
(Syed Mansoor Ali Shah) Judge

S. Zahid/Iqbal

APPROVED FOR REPORTING.

~~Certified~~ to be True Copy

6/24/2013

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