

Form No.HCJD/C-121  
**ORDER SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**  
**W.P.No.17371 of 2015**

**Muhammad Tariq Komboh** VS. **The Federation of Pakistan,  
 Finance Division, Islamabad,  
 etc.**

Sr. No. of order/proceeding	Date of order/proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
	28.03.2019	Mr. Faisal Rashid Ghouri, Advocate for the petitioner. Mr. Zain ul Abideen Bokhari, Advocate for respondent No.3.

This petition impugns notice dated 10.02.2015, issued under sub-section (4) of section 114 of Ordinance of 2001 and show cause notice dated 27.04.2015, issued under section 122-C of the Income Tax Ordinance, 2001 ("Ordinance of 2001"). The matter relates to tax year 2009. Petitioner questioned the legitimacy of notice on the ground of limitation in terms of sub-section (5) of section 114 of Ordinance of 2001, despite objection notice under section 122-C was issued. Confronted with the situation, the petitioner filed writ petition No.14151 of 2015, wherein in terms of order dated 14.05.2015, the matter was sent to Commissioner IR to consider objection qua limitation. The matter was heard and vide order dated 02.06.2015, the Commissioner rejected said

objection and notice under section 122-C of the Ordinance of 2001 was held legal. Hence this petition.

2. Learned counsel for the petitioner contends that notice under sub-section (4) of section 114 can validly be issued in respect of one or more of the last five completed tax years. However, in this case notice was issued on 10.02.2015 directing the petitioner to submit return of income for the tax year 2009. Per learned counsel, no notice under sub-section (4) of section 114 of Ordinance of 2001, for the tax year 2009, could be issued after 30.06.2014. Reliance is placed on unreported judgment dated 10.05.2019 in case titled as MUHAMMAD SOHAIL v. COMMISSIONER IN LAND REVENUE, ETC (Writ Petition No.21489 of 2015).

3. Learned counsel for the department submitted that expression 'completed tax year' would mean last day of the financial year next during, which return of income for preceding tax year has to be filed. It is explained that return of income, for the tax year 2009, would become payable within next succeeding financial year, which date would be 30.06.2010 in this case. Therefore, notice dated 10.02.2015 under sub-section (4) of section 114 of Ordinance of 2001, for the tax year

2009, can be validly issued till 30.06.2015. learned counsel supported order dated 02.06.2015. It is contended that petitioner has right to file an appeal, which was not done, hence the petition is incompetent.

4. It is expedient to reproduce sub-section (4) and (5) of section 114, section 2(68) and sub-section (1) of section 74 of Ordinance of 2001, which read as;

*"114. Return of Income*

(4) *Subject to sub-section (5), the Commissioner may, by notice in writing, require any person who, in the Commissioner's opinion, is required to file a return of income under this section for a tax year or assessment year but who has failed to do so to furnish a return of income for that year within thirty days from the date of service of such notice or such longer or shorter period as may be specified in such notice or as the Commissioner may allow."*

(5) *A notice under sub-section (4) may be issued in respect of one or more of the last five completed tax years or assessment years.*

*Provided that in case of a person who has not filed return for any of the last five completed tax years, notice under sub-section (4) may be issued in respect of one or more of the last ten completed tax years.*

2. *Definitions;*

(68) *"Tax year" means the tax year as defined in sub-section (i) of section 74 and, in relation to a person, includes a special year or a transitional year that the person is permitted to use under section 74;"*

74. *Tax year — (1) For the purpose of this Ordinance and subject to this section, the tax year shall be a period of twelve months ending on the 30<sup>th</sup> day of June (hereinafter referred to as 'normal tax year') and shall, subject to sub-section (3), be denoted by the calendar year in which the said date falls.*

*(3) A per may apply, in writing, to the Commissioner to allow him to use a twelve months' period, other than normal tax year, as special tax year and the Commissioner may, subject to sub-section (5), by an order, allow him to use such special tax year.*

*[Emphasis supplied]*

5. The objection regarding competency of the petition is misconceived in view of nature of challenge posed, whether respondent No.3 has the authority to issue notice under sub-section (4) of section 114 of Ordinance of 2001 beyond the time prescribed under sub-section (5) of section 114, *ibid*.

6. *(The real issue is the question of determination of cut-off date for the issuance of notice under sub-section (4) of section 114 of Ordinance of 2001 for the tax year 2009.)* Department's version, reiterated by learned counsel, was that period of limitation of five years would commence from the last day of the financial year next during which return of income for preceding year had to be filed in terms of sub-section (2) of section 118 of Ordinance of 2001, which period of five years for

the purposes of sub-section (5) of section 114 of the Ordinance, in this case, would be reckoned from 30.06.2010. The argument is misconceived when examined in the wake of sub-section (5) of section 114 of the Ordinance of 2001. The expression 'completed tax year' - employed therein - cannot be construed to enlarge the limitation beyond period of twelve months ending on 30<sup>th</sup> day of June of relevant calendar year. Reference to clause (b) of sub-section (2) of section 118 of Ordinance of 2001 is inapt and inappropriate, which deal with the method of furnishing returns and other documents and bears no proximity to sub-section (5) of section 114 of the Ordinance. It is expedient to reproduce sub-section (2) of section 118 of the Ordinance:

*"(2) A return of income [under section 114 or a statement under sub-section (4) of section 115] of a company shall be furnished—*

- (a) in the company with a tax year ending any time between the first day of January and the thirtieth day of June, on or before the thirty-first day of December next following the end of the tax year to which the return relates; or
  - (b) in any other case, on or before the thirtieth day of September next following the end of the tax year to which the return relates".
- /

7. (The submission of the department to consider relevant tax year complete – for the purposes of sub-section (5) of section 114 of Ordinance of 2001 – on the last day of next financial year or on the date prescribed in terms of clause (b) of sub-section (2) of section 118 of Ordinance of 2001 is illegal. The time would not run from the date of the default, when return of income has to be normally submitted, but to be reckoned from 30<sup>th</sup> day of June, for which period return of income had to be submitted but was not done. The interpretation put forward by the department through order dated 02.06.2015 is erroneous and based on mis-application of law. It is nonsensical to assume and hold that limitation in terms of sub-section (5) of section 114 of Ordinance of 2001 can be varied by changing the date prescribed under clause (b) of sub-section (2) of section 118 of Ordinance of 2001, which would then give department an option to vary period of limitation, which is contrary to the law and judicial pronouncements.) Reliance is placed on “ADDITIONAL COMMISSIONER INLAND REVENUE, AUDIT RANGE, ZONE-I and others v. Messrs EDEN BUILDERS LIMITED and others” (2018 SCMR 991). //

8. In the circumstances, notice dated 10.02.2015 issued under sub-section (4) of section 114, show cause notice dated 27.04.2015 issued under section 122-C of the Ordinance of 2001, and consequently order dated 02.06.2015, are declared as issued /passed without lawful authority – being beyond the limitation – and of no legal effect.

9. In view of the above, this writ petition is accepted accordingly.

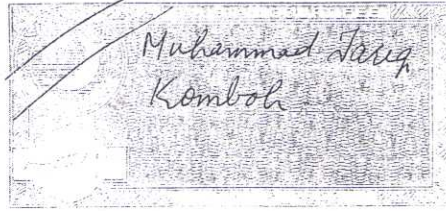
(Asim Hafeez)  
Judge

Approved for Reporting.

TRUE COPY  
In Case No. ....  
Examiner, J.C.B (C.C. Branch)  
Lahore High Court, Lahore

A.D. Mian\*

IN THE LAHORE HIGH COURT LAHORE



W.P.NO. 17371 /2015

1. **Mr. Muhammad Tariq Komboh S/o Muhammad Aashiq Komboh**,  
57-8/B, Street # 15 Usman e Ghani, Muhallah Salak Abad, Aqab  
Firdous Mills, Bund Road, Lahore  
  
(CNIC No: 35202-2754747-3)

.....Petitioner

Versus

1. The Federation of Pakistan, Through Secretary Finance, Finance  
Division, Islamabad.
2. The Federal Board of Revenue, Constitutional Avenue Islamabad  
through its chairman.
3. The Commissioner Inland Revenue, BTB Zone, Regional Tax Office,  
Lahore.
4. The Officer Inland Revenue, Unit-03, BTB Zone, Regional Tax  
Office, Lahore

.....Respondents

**WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF  
ISLAMIC REPUBLIC OF PAKISTAN, 1973.**

Respectfully submitted:

- 1) That the addresses of the parties have sufficiently been provided in the  
caption of the petition for properly affecting the process of service.
- 2) That the petitioner is a disable citizen of Pakistan not earning any sort  
of taxable income living hands to mouth and spending his livelihood  
on the basis of home stitching or financial support made by other  
family members.

Copy of Disable Certificate and Income Tax Return for tax year 2013 is  
attached herewith as **(Annexure- A)**

- 3) That the facts giving rise to the instant Writ Petition are stated in  
brief:-
  - a) That the petitioner received Notices under section 114(4) of the  
Income Tax Ordinance, 2001 dated 10.02.2015 for the tax years  
2009 & 2013 subsequently. Petitioner was required to furnish