**GOVERNMENT OF PAKISTAN**
**REVENUE DIVISION**
**FEDERAL BOARD OF REVENUE**
**(LEGAL WING)**
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**No.2(1)S(L-DT)/2019** **Islamabad, the 09th , October, 2019**

**To,**

**All the Chief Commissioners,**
**Inland Revenue,**
**Regional Tax Offices/Corporate Tax Offices/ Large Taxpayers Offices,**

**SUBJECT:- JUDGMENT OF THE HON'BLE SUPRME COURT ON THE ISSUE LIMITATION FOR FILING AN APPLICATION FOR RESTORATION OF TAX REFERENCE DISMISSED FOR NON PROSECUTION.**

Kindly refer to the above subject.

02. I am directed to say that the Hon'ble Supreme Court vide judgment dated 15.07.2020 in CP Nos.310 to 314-L of 2017 titled as Commissiner Inland Revenue versus M/s Rafeh Limited while interpreting the provisons of Article 168 and 181 of the First Schedule to the Limitation Act, 1908 in the wake of its judgment reported as 2017 SCMR 1006 in the case of Squib Pakistan Pvt. Ltd has ruled as under:-

> ***"As held in Squib Pakistn Pvt. Ltd, taking Application under section 133(1) of the Ordinance, to be an appeal, Atricle 168 of the First Schedule of the Act is fully applicable to the case and provides 30 days as the period of limitation for readmission or restoration of an appeal dismissed for want of prosecution. In the presence of a specific provision under Article 168, Article 181 stands excluded and does not apply"***

03. Since the controversy regarding period of limitation for filing of application for restoration of an appeal / reference dismissed for want of prosecution has been laid to rest by the three Judges Bench of the Hon'ble Supreme Court of Pakistant, it is advised that it must be ensured that in case of dismissal of departmental referece for want of prosecution, application for restoration must be filed within thirty days of the order of dismissal. Copy of the judgment of the Hon'ble Supreme Court has been placed on the official web.site of the FBR.

09.10.2020

**(MUHAMMAD KHALID GILL)**
**Second Secretary (Legal-DT)**

Copy to Member (Operations-IR), Federal Board of Revenue.

e.Dox 135297-R 09-10-2020

**IN THE SUPREME COURT OF PAKISTAN**
(Appellate Jurisdiction)

**Present:**
Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

**Civil Petition Nos.310-L to 314-L of 2017, 741-L, 742-L, 752-L, 782-L to 784-L of 2019, 979-L of 2019, 2557-L of 2018, 3119-L of 2017, 3747-L of 2019, 3749-L of 2019**

*(on appeals from the orders of Lahore High Court, Lahore dated 14.12.2016, passed in PTR Nos.414 to 418 of 2010, dated 19.09.2017 in PTR No.174 of 2009, dated 31.10.2016 in PTR No.147/2007, dated 23.11.2015 in PTR No.311/2008, dated 06.12.2016 in PTR Nos.450 & 451 of 2012, dated 23.11.2016 in PTR No.425 of 2012, dated 23.11.2016 in ITA Nos.01, 02, 03 of 2001, dated 12.09.2018 in PTR No.282/2004, dated 12.06.2018 in PTR No.281 of 2004, dated 12.09.2018 in PTR No.194 of 2007)*

Commissioner of Inland Revenue, Legal Division, Regional Tax Office, 40-Lawrence Road, Lahore, etc.

***.....Petitioners***

***Versus***

M/s Rafeh Limited

***.....Respondent***

For the petitioners: Mr. Sajid Ijaz Hotian, ASC
(C.P. Nos.310-L to 314-L/2017)

Mr. Imtiaz A. Shaukat, AOR
(in C.P. No.3119-L/2017) Mr. Ibrar Ahmad, ASC

Mr. Imtiaz A. Shaukat, AOR
(in C.P. Nos.2557-L/2018 Mian Yousaf Umar, ASC
9797-L/2019, 741,742,
752,782 to 784-L of 2019)

(C.P. No.3747 & 3749-L/19) Ch. Muhammad Zafar Iqbal, ASC

For the respondents: Mr. Amir Umer Khan, ASC
(C.P. Nos.741, 742-L
782 & 783-L/19)

(C.P. No.3749-L/19 Mr. M. Iqbal Hashmi, ASC
782 to 784-L of 2019

Date of hearing: 15.07.2020

**ORDER**

**Syed Mansoor Ali Shah, J.**- Brief facts of the case are that the Income Tax Reference filed by the petitioner (the Commissioner of Inland Revenue) under Section 133 (1) of the Income Tax Ordinance, 2001 **("Ordinance")** before the High Court was dismissed for non-prosecution vide order dated 08.09.2015. Thereafter, an application for restoration of the said Tax Reference

was filed on 04.06.2016, after a period of almost nine months, which was also dismissed vide impugned order dated 14.12.2016. This order has been assailed before us.

2. Learned counsel for the petitioners argued that Tax Reference filed under Section 133 (1) of the Ordinance, cannot be dismissed for non-prosecution as it invokes the advisory jurisdiction of the High Court and therefore, the legal questions raised in the Tax Reference are to be answered by the High Court, irrespective of the presence of the parties or their counsel. He next contended that keeping in view the unique nature of the Tax Reference, only Article 181 of the Limitation Act, 1908 **("Act")** is applicable, and therefore the petitioner had a period of three years to file an application for the restoration of the Tax Reference.

3. We have heard the learned counsel for the parties at some length and gone through the record of the case, as well as, the law on the subject.

4. Tax Reference is filed under section 133(1) of the Ordinance which states as under:

> 133. **Reference to High Court**:- (1) Within ninety days of the communication of the order of the Appellate Tribunal under sub-section (7) of section 132, the aggrieved person or the Commissioner **may prefer an application** , in the prescribed form alongwith a statement of the case, to the High Court, stating any question of law arising out of such order.

The above shows that against the order of the Appellate Tribunal an aggrieved person or the Commissioner can prefer an Application before the High Court. This Application, perhaps because of the title of the section or its historical legacy, is commonly referred to as a Tax Reference, when in effect it is an Application. This Court in *Squibb Pakistan Pvt. Ltd*[1] has elaborately and authoritatively traced the legislative history of section 133 and concluded that it is appellate in nature and must be construed and applied as such. The relevant extracts from *Squibb Pakistan Pvt. Ltd* are as under:

> 48. To recapitulate, the problem all along has been the unfortunate legacy of the Act, 1918. This provided a true illustration of advisory jurisdiction, since advice was to be rendered to the Revenue Authority prior to its having passed an order. In 1922, this advisory jurisdiction was retained under section 66(1) of the Act, 1922 which was similarly framed. **However, this subsection had, in sum and substance, lost its importance because of subsection (2), which conferred the**

[1] M/s. Squibb Pakistan Pvt. Ltd. and another v. Commissioner of Income Tax and another (2017 SCMR 1006)

**right to challenge the decision of the Tribunal on questions of law. It was this remedy which was followed thereafter. Section 66(1) ibid thereafter became redundant for all practical purposes and was eventually deleted through a subsequent amendment in 1939 and the same position continued under the Ordinance, 1979 and succeeding law. Thereafter, no advisory jurisdiction remained in any shape or form. But since the significance of the change was not appreciated, the concept of advisory jurisdiction continued to confuse the courts - the corpus had disappeared, but the shadow remained.** The law as it stands after the 2005 amendment is now clear beyond any conceptual doubt. **There is no question of advisory jurisdiction (which phrase was never used in the law at any stage) and the plain words of the section must now be given their ordinary meaning.** No hypertechnicalities now stand as barriers in the way of substantive justice.

49. An independent interpretation of section 133 of the Ordinance, 2001, as it stands today, on the plain language of the law, liberated from the burden or benefit of earlier judgments, would make the position very clear. Subsection (1) confers a right on any person or the Commissioner aggrieved by a final order of the Appellate Tribunal to file an application before the High Court along with a statement of the case stating any questions of law arising out of the Tribunal's order. There is a direct right to approach the High Court in a similar manner as in appeals, revisions, reviews etc. The order being challenged is the final order but the challenge is limited to questions of law only. The statement must set out the facts, the Tribunal's determination and the questions of law which arise out of its order in terms of subsection (3). The questions of law which may be referred are only those which "arise" out of the order of the Tribunal. On the plain language of the law , this would include any question which can be made out from the order of the Tribunal. There is nothing in the scheme of the section to impute any extraordinary limitations on the type of questions which may be posed. The facts as stated in the Tribunal's order have to be taken as recorded and any question which can be made out from those facts may be raised in an application under section 133 ibid, regardless of whether it was previously urged or not. There is absolutely no reason for confining the questions which may be referred to only those which were argued before the Tribunal on the hypothesis that this is an advisory jurisdiction as that is not what the language of the law contemplates. The law, as it stands, allows all questions "arising" out of the order to be referred and not just questions "argued" or "raised' before the Tribunal.

50. Section 133 ibid clearly states that upon hearing a case, the High Court is obligated to decide the question of law raised by the reference and pass judgment thereon and the Tribunal's order automatically stands modified by the order of the High Court. This is an extremely significant aspect as it is the essence of an appellate order that it per se modifies the order of the lower forum, or, in other words, merges into it. As pointed out above, this particular aspect of section 133 ibid was introduced for the first time by way of the 2005 amendment and was not present in section 66 of the Act, 1922 during the brief period between 1971 and 1974 when the law was similar to the present one. **It is**

> **therefore clear beyond any doubt that the remedy under section 133 ibid is appellate in nature and must be construed and applied as such.** The language of the law must be given effect to, rather than unnecessarily restricting the scope of the jurisdiction on the basis of judgments from an era when the law and circumstances were completely different. The civilized world, including our own country, has been moving towards greater rights for citizens over the last century to the extent that the privilege of a fair trial has now become a constitutional right. In these circumstances, it is not appropriate to restrict the scope of a legal remedy available to citizens on the basis of old decision, especially when the language of the law is clearly pointing in the opposite direction.

The above shows that the Application under section 133(1), also referred to as the Tax Reference, is in effect an Appeal and it must be construed as such. The misimpression and confusion in some quarters that a Tax Reference invokes advisory jurisdiction of the High Court and therefore the High Court is bound to answer the question of law brought before it is a misconception and is hereby dispelled. Application under section 133(1) of the Ordinance is no different than an appeal and must be construed and applied as such.

5. Now coming to the question of limitation for filing an application for the restoration of the Application/Tax Reference. As held in *Squibb Pakistan Pvt. Ltd*, taking Application under section 133(1) of the Ordinance to be an appeal, Article 168 of the First Schedule of the Act is fully applicable to the case and provides 30 days as the period of limitation for readmission or restoration of an appeal dismissed for want of prosecution. In the presence of a specific provision under Article 168, Article 181 stands excluded and does not apply. Both the Articles are reproduced hereunder for convenience:-

| *Description of application* | *Period of limitation* | *Time for which period begins to run* |
|---|---|---|
| **168. For the readmission of an appeal dismissed for want of prosecution.** | Thirty days | The date of the dismissal. |

| *Description of application* | *Period of limitation* | *Time for which period begins to run* |
|---|---|---|
| **181.** Applications **for which no period of limitation is provided elsewhere** in this schedule or by section 48 of the Code of Civil Procedure 1908. | Three years | When the right to apply accrues. |

6. Even the merits of the restoration application hopelessly fail to furnish sufficient cause for the restoration of the Application/Tax Reference.

7. For the above reasons, we see no reason to interfere in the impugned order, hence these petitions are dismissed and leave refused.

Judge

Judge

Judge

Lahore,
15th July, 2020.
*Iqbal*
Approved for reporting