

**LAHORE HIGH COURT, LAHORE**  
**(Commercial & Taxation Branch)**

80  
25-10-22

From  
01 NOV 2022  
M(L)

The Deputy Registrar (Commercial & Taxation),  
Lahore High Court, Lahore.

To

The Chairman,  
Federal Board of Revenue,  
Islamabad.

91  
101



Subject: Case No. STR=80/2016

CIR

Appellant

Versus

Lahore Rubber Store, etc

Respondent

Chief (L-I)  
Lit(SC)  
(AGA)  
Chief (L-II) Memo:  
L(HC)  
L(D)  
L(DP)  
Chief (L-III)  
(PA)  
(TO)  
(M-III)

Mem directed to forward a Copy of Order dated 17/10/2022 of this Court along with order of Appellate Tribunal for information and immediate compliance.

*Handwritten notes:*  
- Circulate  
- Send to M/11-ops

*Handwritten notes:*  
- Also discuss

*Handwritten notes:*  
- Please circulate in field functions.  
- Get it uploaded on website  
- Acc to Mark (K-ops)

Assistant Registrar (Commercial & Taxation)  
For Deputy Registrar (Commercial & Taxation)

*Handwritten:*  
22/10/22

*Handwritten:*  
35(CHC)

*Large handwritten mark:*  
18

222462  
FBR e-DOX Dy.No  
Received in Chairman's Sect  
01 NOV 2022

FBR e-DOX No  
Received in M(L) Office on 03 NOV 2022

Stereo. H C J D A 38.  
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT**

**STR NO. 80 of 2016.**

Commissioner Inland  
Revenue.

Vs M/s Lahore Rubber Store

**JUDGMENT**

Date of Hearing:	17.10.2022.
Applicant by:	M/s Waqar A. Sheikh and Raana Muhammad Mehtab, Advocates.
Respondent(s) by:	Mr. Hassan Kamran Bashir, Advocate assisted by Sikandar Ali, Asim Bin Majeed and Afzal Hussain Advocates.

**Shahid Jamil Khan, J:-** Exercise of Rectification Jurisdiction by Appellate Tribunal is questioned.

Respondent registered person's appeal was dismissed through order dated 30.11.2015. Application for rectification under Section 57 of Sales Tax Act, 1990 ("Act of 1990") was moved on various grounds. The Appellate Tribunal, by merely reproducing the grounds and arguments, allowed the application through a concise order, holding earlier decision by another Division Bench of the Tribunal was ignored, declaring it to be a mistake of law. The appeal was allowed, without discussing the impact of the mistake upon the final order already passed.

2. Learned counsel for the applicant-department submits that application for rectification is allowed, without identifying the mistake through a speaking order. He has placed reliance on Judgment in Commissioner Inland Revenue, Gujranwala v. S.K. Steel Casting Gujranwala (2019 PTD 1493) to contend that tax can be charged from a registered person for a period, when it was registerable but was not registered.

3. In response, learned counsel for the respondent-taxpayer submits that earlier decision was an ex-parte order wherein respondent being a retailer was taken to be a manufacturer for the

purpose of taxation. As relevant law could not be applied on wrongly assertion of facts, therefore, application for rectification was moved. He, however, could not show that this aspect was considered in the impugned order of rectification.

4. Heard. Record Perused.

5. Operative part of the impugned order by Appellate Tribunal is reproduced hereunder:-

"5. We are of the considered opinion that a mistake of law has taken place whereby the earlier decision of this Division Bench of the Tribunal has been ignored and the above judgments are binding upon this Division Bench. That the rectification application allowed. Accordingly we rectify the said mistake in the order dated 30.11.2015 and modify the same by holding that since the appellant has been registered for sales tax purpose with effect from 13.11.2014 as retailer the tax liability for the prior periods is not sustainable in the light of judgment of the Tribunal cited supra. As such the impugned order is annulled and the appeal is allowed accordingly."

[emphasis supplied]

The Appellate Tribunal merely relied on an earlier decision by the Appellate Tribunal, without comparing facts of both the cases, therefore, this exercise of power is in sheer violation of law enshrined by Apex Court in Commissioner of Income Tax, Companies Zone-II, Karachi v. Messrs Sindh Engineering (Pvt.) Limited, Karachi (2002 SCMR 527 = 2002 PTD 419). The mistake, as pleaded is not identified and its effect on the original final order is not discussed.

In this Court's opinion, exercise of rectification jurisdiction by the Appellate Tribunal is against the spirit of law, hence improper.

6. The rectification is a jurisdiction ancillary to the appellate jurisdiction, intended to rectify a mistake of fact or law apparent on the face of record which does not require investigation, appraisal of evidence, interpretation of law or an enquiry into facts. August

Supreme Court of Pakistan in Commissioner of Income Tax Company's II, Karachi v. Messrs National Food Laboratories (1992 PTD 570) has already enshrined the principle for identifying mistake of fact or law, relevant part of which is reproduced hereunder:-

"5.....  
Section 35 of – the repealed Income Tax Act, 1922, hereinafter referred to as the 'The Act' confers a power to rectify any mistake in the order which is apparent from the record. Such power can be exercised Suo Motu or if it is brought to the notice by an assessee. Therefore, **essential condition** for exercise of such power is that the mistake should be apparent on the face of record; mistake which may be seen floating on the surface and does not require investigation or further evidence. The mistake should be so obvious that on mere reading the order it may immediately strike on the face of it. Where an officer exercising power under Section 35 enters into the controversy, investigates into the matter, reassesses the evidence or takes into consideration additional evidence and on that basis interprets the provision of law and forms an opinion different from the order, then it will not amount to 'rectification' of the order. Any mistake which is not patent and obvious on the record, cannot be termed to be an order which can be corrected by exercising power under Section 35. In this regard reference can be made to Sheikh Muhammad Iftikharul Haq v. Income Tax Officer, Bahawalpur, PLD 1966 SC 524 and Pakistan River Steamer Limited v. Commissioner of Income Tax, 1971 PTD 204. In the present case the mistake pointed out by the petitioner was not of a nature to attract section 35 and, therefore, the High Court has correctly answered the first question in the negative."

(emphasis supplied)

7. We have noticed, in number of cases that Appellate Tribunal, on an application for rectification, recalls its earlier final order and fixes the appeal for rehearing. Such practice is deprecated and held alien to the rectification jurisdiction. Mostly, the application for rectification is moved, after lapse of limitation to file Tax Reference. It is held that rectification jurisdiction cannot be a

substitute of Tax Reference, therefore, the Tribunal must check the *bonafide* by seeking explanation for not filing rectification application, soon after the date of receiving certificate copy of the final order.

The law intends rectification, of an identified mistake, within the existing final order and not another independent order for different reasons. The Appellate Tribunal must identify the mistake, of law or fact, in accordance with the stipulated guidelines given by August Supreme Court in National Food Laboratories Case *supra*. After recording reasons for the identified mistake, the mistake should be corrected in the original final order, sought to be rectified. On such correction or amendment, if result of the appeal demands change, reasons for changing the result should be recorded separately.

\* After exercising original jurisdiction, the Tribunal becomes *functus-officio* with a little window for rectification of a mistake which in our opinion is an equitable remedy because law favour justice, to ensure that, an apparent and floating mistake, causing injustice, is allowed to be rectified within limitation of five years. Normally, an appealable order attains finality on expiration of limitation for filing the appeal or other remedy. Such a finality, cannot be compromised by filing an application for rectification to manage rehearing or review of the mater. Any injustice, because of an identified mistake, is rectifiable, as envisages in Section 221 of Income Tax Ordinance, 2001 ("**Ordinance of 2001**"), Section 57 of Sales Tax Act, 1990 ("**Act of 1990**") and Section 70 of Federal Excise Act, 2005 ("**Act of 2005**").

8. Since the exercise of jurisdiction is improper, therefore, the impugned order is set-aside. The application for rectification moved by the respondent-taxpayer shall be deemed pending which shall be decided strictly under the guidelines as enshrined in National Food Laboratories Case and by following the steps for exercise of rectification jurisdiction given in this case.

/e

9. Tax Reference is disposed of accordingly.
10. Office shall send a copy of this order under the seal of the Court to the learned Appellate Tribunal as per Section 47(5) of the Sales Tax Act, 1990.

A copy be also sent to the Chairman Appellate Tribunal Inland Revenue and Chairman FBR, for circulation and compliance.



(Muhammad Sajid Mehmood Sethi)  
Judge

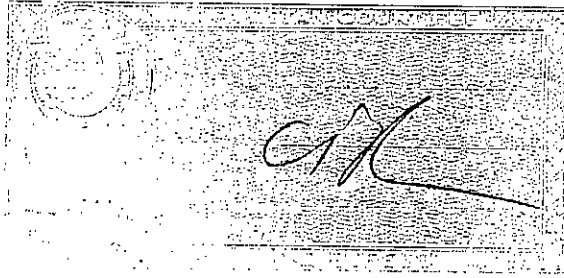


(Shahid Jamil)  
Judge

Waqas\*

**TRUE COPY**  
24/8/22  
Examiner J.C.B (Copy Branch)  
Lahore High Court, Lahore

IN THE LAHORE HIGH COURT, LAHORE



S.T.R. No. 80 /2016

Commissioner Inland Revenue Zone-VI, RTO, Lahore.

Petitioner

Versus

M/s Lahore Rubber Store, Prop. Abdul Qayum, 87, Circular Road, Lahore.

Respondent

**REFERENCE UNDER SECTION 47 OF THE  
SALES TAX ACT, 1990 AGAINST order  
DATED 28-01-2016 PASSED IN MA NO.  
647/LB/2015.**