

IN THE LAHORE HIGH COURT, LAHORE

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From

The Addl. Registrar (Judl)
Lahore High Court, Lahore.



JSB

01 JUL 2022

M(L)

To

1. The Federal Board of Revenue through its Chairman, FBR House, 5 - Constitution Avenue, Islamabad.
2. The Chief Commissioner Inland Revenue, Large Taxpayers Office, Tax House, Nabha Road, Lahore.
3. The Commissioner Inland Revenue (Audit - I), Large Taxpayers Office, Tax House, Nabha Road, Lahore.
4. The Assistant/Deputy Commissioner (Audit - I) Inland Revenue, Range-I-Unit-02, Zone-I, Large Taxpayers Office, Lahore.
5. The Federation of Pakistan through Secretary Revenue Division, Pakistan Secretariat, Islamabad.

Chief (L-I)
S-Lit(SC)
S(A&A)
S(A)
Chief (L-II)
S-Lit(MC)
S(L-DT)
S(L-IDT)
Chief (L-III)
S(PA)
S(TO-I)
S(TO-II)
PS

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SC Lit - HC
Please place on Website.

SUBJECT: - WRIT PETITION NO: 1CA-18877-22 + 18875-22

Sir,

In continuation of this Court letter No _____ dated _____

I am directed to forward for information and immediate compliance a copy of this Court's Order/Judgment dated 9-6-22 passed in the above noted case.

Your's faithfully
[Handwritten Signature]

ASSISTANT REGISTRAR (WRIT)
FOR ADDL. REGISTRAR (JUDL)

[Handwritten Signature]
23/6/22

MK
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FBR e-Box No _____
Received in M(L) Office on 06 JUL 2022

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FBR e-Box No _____
Received by Chairman's Sectt
on 01 JUL 2022

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT**

ITR No.59534 of 2021

Commissioner Inland Revenue, Zone-II, Lahore

Versus

Shazia Zafar

JUDGMENT

Date of hearing: 09.06.2022.
Applicant-department by: M/s. Shahzad Ahmad Cheema, Kamran Sheikh Mughal, Sohail Tariq, Liaquat Ali Chaudhary, Ch. Muhammad Yaseen Zahid, Ch. Muhammad Shakeel, Sarfraz Ahmad Cheema, Naveed Tahir, Shahid Sarwar Chahil, Sheikh Aqeel Ahmad, Barrister Ahmad Pervaiz, Barrister Ahtsham Mukhtar, Barrister Saffi-ul-Hassan, Jawad H. Tarar, Rizwan Qureshi, Advocates / Legal Advisors in instant as well as connected cases.
Naeem Khan and Muhammad Yahya Johar, Advocates for FBR.

Respondent-taxpayers by: M/s. Barrister Shehryar Kasuri, Imtiaz Rasheed Siddiqui, Shehryar Kasuri, Raza Imtiaz Siddiqui, Hamza Sheikh, Qadeer Ahmad Klyar, Sabeel Tariq Mann, Raza Imtiaz Siddiqui, Zahid Attique Chaudhary, Ahsan Awan, Rashid Khan, Sameer Saeed Ahmad, Asad Abbas Raza, Muhammad Usman Zia, Muhammad Ahsan Mehmood, Muhammad Imran Rashid and Qaiser Mehmood Sipra, Advocates in instant as well as connected cases.

MUHAMMAD SAJID MEHMOOD SETHI, J.- This consolidated judgment shall decide instant Reference Application, along with connected Reference Applications i.e. I.T.R No.6141, 25832 & 28864 of 2022, I.T.R Nos.22372, 56087, 57714, 57717, 59532, 59533, 60628, 61406, 61934, 66542, 67607, 69139, 72983

& 72984 of 2021, 118 of 2014, 160 of 2011, PTR No.323 of 2013 and I.C.A Nos.18875 & 18877 of 2022, as common questions of law and facts are involved in these cases.

2. Through these Reference Applications under section 133(1) of the Income Tax Ordinance, 2001 (**"the Ordinance of 2001"**), following questions of law, asserted to have arisen out of impugned orders passed by learned Appellate Tribunal Inland Revenue, Lahore Bench, Lahore (**"Appellate Tribunal"**), in instant and connected Reference Applications, have been proposed for our opinion:-

1. Whether the learned Appellate Tribunal has erred in law by deleting the additions made under Section 111 of the Ordinance while holding that a separate and specific notice is required for addition under Section 111 when there is no specific provision in the Ordinance requiring separate notice under Section 111 of the Ordinance?
2. Whether learned Appellate Tribunal IR has overlooked the scheme of law that Section 111 of the Ordinance cannot be read in isolation without making reference to Section 122(1), 122(5)(ii) and 122(9) of the Ordinance?
3. Whether the learned Appellate Tribunal IR fell in error by failing to appreciate that in view of insertion of the 'Explanation' in section 111 of the Income Tax Ordinance, 2001 vide Finance Act, 2021 the issuance of a separate notice under section 111 was not required for amendment of an assessment under section 120 of the Ordinance?

The Intra Court Appeals involve legality or otherwise of issuance of notice under Section 111 subsequent to notice issued under Section 122(9) of the Ordinance of 2001.

3. Learned Legal Advisors for applicant-department submit that learned Appellate Tribunal was not justified to annul the additions made by learned fora below on the ground of non-issuance of separate notice under Section 111 of the Ordinance of 2001 to the taxpayer. They add that learned Appellate Tribunal has failed to appreciate that respondent-taxpayer could not explain the sources of investment. They further submit that as notice under Section 122(9) was issued, therefore, there was no need to issue separate notice

under Section 111 of the Ordinance of 2001, as also specifically provided in Explanation to Section 111. They argue that even non-issuance of notice under Section 111 would not declare the proceedings conducted under said provisions of law as illegal and without jurisdiction. They maintain that non-issuance of separate notice under Section 111 has not caused any prejudice to respondent-taxpayers as substantial compliance of said provisions of law has been made. They contend that earlier judgments reported as Commissioner Inland Revenue, RTO, Faisalabad v. Faqir Hussain and another (2019 PTD 1828) and Commissioner Inland Revenue, Multan Zone v. Falah ud Din Qureshi (2021 PTD 192) need to be re-examined in the light of ratio laid down by Hon'ble Supreme Court in Commissioner Inland Revenue Zone Bahawalpur, Regional Tax Office, Bahawalpur v. Messrs Bashir Ahmed (deceased) through LRs. (2021 PTD 1182).

4. Learned counsel for the respondent-taxpayers defend the impugned orders and submit that decision by another learned Bench of this Court regarding issuance of separate notice being mandatory has also been upheld by Hon'ble Apex Court vide order dated 15.04.2021, passed in **Civil Petition No.241-L/2020**. They add that compliance of mandatory provisions of Section 111 of the Ordinance of 2001 was not made, hence, learned Appellate Tribunal has rightly annulled the impugned additions. They submit that operation of 'Explanation' added to Section 111, by way of Finance Act, 2021, which is affecting substantive existing rights of taxpayers, must be given prospective effect. They have referred to Messrs Fazal Din & Sons (Pvt.) Ltd. v. Federal Board of Revenue, Islamabad and others (2009 SCMR 973), M/s. Super Engineering and another v. Commissioner Inland Revenue, Karachi (2019 PTD 1912) and Commissioner Inland Revenue Zone Bahawalpur, Regional Tax Office, Bahawalpur v. Messrs Bashir Ahmed (Deceased) through LRs (2021 SCMR 1290).

5. We have heard learned counsel for the parties at length and gone through the record with their able assistance.

6. Before dilating upon the proposed questions / issues involved in these cases, it would be expedient to reproduce provisions of Section 111(1) of the Ordinance of 2001, as under:-

- "111. Unexplained income or assets.--** (1) Where--
- (a) any amount is credited in a person's book of account;
 - (b) a person has made any investment or is the owner of any money or valuable article;
 - (c) a person has incurred by expenditure; or
 - (d) any person has concealed income or furnished inaccurate particulars of income including--
 - (i) the suppression of any production, sales or any amount chargeable to tax; or
 - (ii) the suppression of any item of receipt liable to tax in whole or in part,

and the person offers no explanation about the nature and source of the amount credited or the investment, money, valuable article, or funds from which the expenditure was made suppression of any production, sales, any amount chargeable to tax and of any item of receipt liable to tax or the explanation offered by the person is not, in the Commissioner's opinion, satisfactory, the amount credited, value of the investment, money, value of the articles, or amount of expenditure suppressed amount of production, sales or any amount chargeable to tax or of any item of receipt liable to tax shall be included in the person's income chargeable to tax under head "Income from Other Sources" to the extent it is not adequately explained.

Provided that where a taxpayer explains the nature and source of the amount credited or the investment made, money or valuable article owned or funds from which the expenditure was made, by way of agricultural income, such explanation shall be accepted to the extent of agricultural income worked back on the basis of agricultural income tax paid under the relevant provincial law."

7. It is conspicuous from glance of afore-referred provisions that if the instances / categories of unexplained income and assets, detailed therein, emerge to the Commissioner, he is required to invite explanation from the taxpayer, confronting the information collected that its case comes within the head(s) specified in subsection (1), before adjudging the matter. Albeit, specific word

“notice” is not introduced in the said provisions of law but words “...the person offers no explanation...” and “...or the explanation offered by the person is not, in the Commissioner’s opinion, satisfactory...” connote that notice is the proper mechanism to call for explanation from taxpayer. Thus, notice and corresponding non-satisfactory elucidation are prerequisites to make addition under Section 111 of the Ordinance of 2001 otherwise the addition would be legally unsustainable owing to non-compliance of said provision of law. This view is reinforced by the decisions in the cases reported as Commissioner Inland Revenue v. Muhammad Shafique (2015 PTD 1823), Commissioner Inland Revenue, Zone-I, Regional Tax Office, Sukkur v. Messrs Ranipur CNG Station, Ranipur (2017 PTD 1839), Commissioner Inland Revenue, RTO, Faisalabad v. Faqir Hussain and another (2019 PTD 1828) and Commissioner Inland Revenue, Multan Zone v. Falah ud Din Oureshi (2021 PTD 192).

8. The *ratio decidendi* of latest decision of Hon’ble Supreme Court in the case of Messrs Bashir Ahmed (Deceased) through LRs supra, is required to be comprehended as this decision has been relied upon by learned counsel for the parties. First of all, brief facts of the case are pictured. The return of taxpayer was taken as deemed assessment order, however subsequently, it was found that the taxpayer had only declared agricultural income of Rs.500,000/, whereas the department had definite information that taxpayer acquired immoveable property in the sum of Rs.56,00,000/-. On such basis, a notice dated 24.09.2011 was issued under section 122(1) read with sub-sections (5) and (9) thereof, requiring the respondent to show cause as to why the deemed assessment order should not be suitably amended. Thereafter, another notice under section 111(1)(b) was also issued in respect of the aforesaid property.

The Hon’ble Apex Court discussed provisions of Sections 122 & 111 in the backdrop of facts of the case by narrating that

sub-section (8) of Section 122 contains definition of "definite information", which includes *information on the acquisition, possession or disposal of any money, asset, valuable article or investment made or expenditure incurred by the taxpayer*. Sub-section (5) of Section 122 requires that the deemed assessment order can only be amended *where, on the basis of definite information acquired from an audit or otherwise* the Commissioner was satisfied that any one of three clauses of the sub-section was applicable. As no audit was involved in the case, therefore, the definite information could only have been "otherwise" acquired. And one manner in which the information can be so acquired is provided under section 111, if any of its clauses is found to apply.

The august Court, after noting sequence of notices under section 122(1), (5) & (9), which was prior in time and under section 111 (subsequent), observed that the first notice claiming that *the department is in possession of definite information* regarding the investment allegedly made in immoveable property and subsequent notice with same claim clearly reflect that the taxpayer was not given an opportunity, as is mandatorily required by section 111, to satisfy the tax authorities as to the source etc. of the funds by which the immoveable property was acquired rather deemed assessment order was passed on the basis of already available definite information; that assessment could not have been amended until first the proceedings under section 111 had culminated in an appropriate order to allow the amendment of the deemed assessment order as sub-section (2) of section 111 contains elaborate statutory instructions as to which is the tax year in which the concealed income is to be added; that it is possible for both steps, i.e., the finding under section 111 and the amendment of the deemed assessment order to be done together, and for the notice under section 111 to be issued along with the notice to amend, however, in such a case, the proceedings and

notice(s) must expressly so state on the face of it; and that proceedings under section 111 were short circuited altogether since the department began with the premise that it already had definite information available with it, and the concerned officer proceeded accordingly, which could not have been done.

In view of above findings, we are not persuaded that earlier decisions on the issue of issuance of separate notice under Section 111 being mandatory is required to be re-visited or afore-referred decision of Hon'ble Supreme Court supports the case of applicant-department.

Moreover, sequence of issuing notice under Section 111 subsequent to notice issued under Section 122 has also not been approved by the Hon'ble Apex Court, thus, the issue raised in Intra Court Appeals is answered accordingly, resulting in acceptance of these Appeals to this extent. Even, the august Supreme Court, in a recent unreported case, vide order dated 15.04.2021, passed in **Civil Petition No.241-L/2020** titled Commissioner Inland Revenue, Lahore v. Tauqeer Ahmed, upheld the judgment dated 04.12.2019, passed by a learned Division Bench of this Court passed in **ITR No.73636/2019**, on the strength of order dated 23.10.2019, passed in **ITR No.62815/2019**, on the question of issuance of separate notice for addition under Section 111 of the Ordinance of 2001.

9. As far as question of applicability of Explanation added to Section 111, in this case, is concerned, it would be advantageous to reproduce the explanation, added by the Finance Act, 2021:-

Explanation.— For the removal of doubt, a separate notice under this section is not required to be issued if the explanation regarding nature and sources of amount credited or the investment of money, valuable article, or the funds from which expenditure was made has been confronted to the taxpayer through a notice under sub-section (9) of section 122 of this Ordinance.

It suffices to say that the issue regarding issuance of separate notice under Section 111 was laid to rest by this Court much prior to

insertion of the explanation. It is also well-settled that all fiscal statutes shall apply prospectively unless specifically and expressly provided otherwise. Therefore, by no stretch of imagination, the explanation could be applied retrospectively. Needless to say that change in substantive law, which divested and adversely affected the vested rights of the parties should always have prospective application, unless by express word of the legislation and/or by necessary intendment/implication, such law had been made applicable retrospectively. It is well-settled now that the Courts lean against giving retrospective operation where no vested rights or past transactions prejudicially affect or exist. A legislation does not operate retrospectively if it touches a right in existence at the time of passing of legislation. Rights of parties are to be decided according to law existing when action began unless provision made to contrary. Where statute itself does not make its operation retrospective, it would not be reasonable to claim that by necessary implication it has retrospective operation. Reference can be made to Nagina Silk Mill, Lyallpur v. The Income Tax Officer, A-Ward Lyallpur and another (PLD 1963 SC 322), Adnan Afzan v. Capt. Sher Afzal (PLD 1969 SC 187), Nabi Ahmed and another v. Home Secretary, Government of West Pakistan, Lahore and 4 others (PLD 1969 SC 599), Province of East Pakistan v. Sharafatullah and 87 others (PLD 1970 SC 514), Sona and another v. The State and others (PLD 1970 SC 264), Hassan and others v. Fancy Foundation (PLD 1975 SC 1), The Collector, Customs and Central Excise, Peshawar and others v. M/s. Rais Khan Limited through Muhammad Hashim (1996 SCMR 83), Malik Gul. Hasan and Co. and 5 others v. Allied Bank of Pakistan (1996 SCMR 237), Manzoor All and 39 others v. United Bank Limited through President (2005 SCMR 1785), Commissioner of Income Tax v. Messrs Eli Lilly Pakistan (Pvt.) Ltd. (2009 PTD 1392), Muhammad Tariq Badr and another v. National Bank of Pakistan and others (2013 SCMR 314), Badshah Gul Wazir v. Government of Khyber

Pakhtunkhwa through Chief Secretary and others (2015 SCMR 43)
and Commissioner Inland Revenue, RTO, Rawalpindi v. Messrs
Trillium Pakistan (Pvt.) Ltd., Rawalpindi and others (2019 SCMR
1643).

In the case of Messrs Trillium Pakistan (Pvt.) Ltd.,
Rawalpindi supra, the Hon'ble Supreme Court has observed as
under:-

"3.... An explanation in a statute ordinarily operates to
clarify the law prospectively. However, retrospective
liability is imposed when an explanation attributes a
meaning to a substantive provision or expression whereby
the burden, obligation or liability of a person is increased
for a past period. Such retrospective impact is to be
avoided unless the express language of the explanation
warrants such an interpretation."


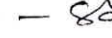
10. In view of the above, our answer to the proposed questions is
in negative i.e. against the applicant-department and in favour of
respondent-taxpayers.

This Reference Application as well as connected Reference
Applications and Intra Court Appeals, are decided against
applicant-department.

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


(Muzamil Akhtar Shabir) (Muhammad Sajid Mehmood Sethi)
Judge Judge

APPROVED FOR REPORTING

 
(Muzamil Akhtar Shabir) (Muhammad Sajid Mehmood Sethi)
Judge Judge

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Examiner J.C.B (Copy Branch)
Lahore High Court, Lahore

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

ICA No.18877 of 2022

DG Khan Cement Company Limited, Lahore

Versus

Federal Board of Revenue, Islamabad & others

JUDGMENT

Date of hearing: 09.06.2022.

Presence as in main case.

MUHAMMAD SAJID MEHMOOD SETHI, J.- For the reasons recorded in judgment of even date passed in the connected case i.e. **ITR No.59534 of 2021** titled Commissioner Inland Revenue, Zone-II, Lahore v. Shazia Zafar, this appeal is **decided** in terms mentioned therein.

Muzamil Akhtar Shabir
(Muzamil Akhtar Shabir)
Judge

Muhammad Sajid Mehmood Sethi
(Muhammad Sajid Mehmood Sethi)
Judge

Sultan

10/22

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Examiner J.C.B (Copy Branch)
Lahore High Court, Lahore

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IN THE LAHORE HIGH COURT, LAHORE

Intra Court Appeal No. 18877/2022

In

Writ Petition No. 42254/2021

DG Khan Cement Company Limited through its CFO Mr. I.U. Niazi, Nishat House,
53-A Lawrence Road, Lahore.

..... APPELLANT

VERSUS

1. **The Federal Board of Revenue** through its Chairman, FBR House, 5 -
Constitution Avenue, Islamabad.
2. **The Chief Commissioner Inland Revenue**, Large Taxpayers Office, Tax
House, Nabha Road, Lahore.
3. **The Commissioner Inland Revenue (Audit - I)**, Large Taxpayers Office, Tax
House, Nabha Road, Lahore.
4. **The Assistant/Deputy Commissioner (Audit - I) Inland Revenue**, Range-I-
Unit-02, Zone-I, Large Taxpayers Office, Lahore.
5. **The Federation of Pakistan** through Secretary Revenue Division, Pakistan
Secretariat, Islamabad.

..... RESPONDENTS

APPEAL under section 3(2) of the Law Reforms Ordinance, 1972 against the Order dated 07.03.2022 in W.P. No. 42254/2021 passed by a learned Single Bench of this honourable Court

Respectfully submitted:

The following issues arise for determination by this honourable Court:

1. That the Appellant received Notices dated 14.06.2021, 15.06.2021 and 25.06.2021 under section 122 and section 111 ("impugned Notices") of the Income Tax Ordinance, 2001 ("**Ordinance**") issued by the Respondents. The same inter alia were assailed before this honourable Court on several grounds, the primary one being that proceedings in terms of section 111 of the

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

ICA No.18875 of 2022

Hyundai Nishat Motor (Pvt.) Limited, Lahore

Versus

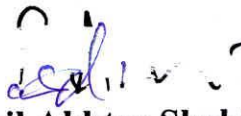
Federal Board of Revenue, Islamabad & others

JUDGMENT

Date of hearing: 09.06.2022.

Presence as in main case.

MUHAMMAD SAJID MEHMOOD SETHI, J.- For the reasons recorded in judgment of even date passed in the connected case i.e. ITR No.59534 of 2021 titled Commissioner Inland Revenue, Zone-II, Lahore v. Shazia Zafar, this appeal is **decided** in terms mentioned therein.


(Muzamil Akhtar Shabir) (Muhammad Sajid Mehmood Sethi)
Judge Judge

Sultan

TRUE COPY
Examiner J.C.B (Copy Branch)
Lahore High Court, Lahore



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IN THE LAHORE HIGH COURT, LAHORE

Intra Court Appeal No. 18875 /2022

In

Writ Petition No. 47129/2021

Hyundai Nishat Motor (Pvt.) Limited, 1 - B Aziz Avenue, Canal Bank, Gulberg V, Lahore through its duly authorised officer Mr. Norez Abdullah, Chief Financial Officer.

.....APPELLANT

VERSUS

1. **The Federal Board of Revenue**, through its Chairman, 5 - Constitution Avenue, Islamabad.
2. **The Chief Commissioner Inland Revenue**, Large Taxpayers Office, Lahore.
3. **The Commissioner (Audit - I) Inland Revenue**, Zone I, Large Taxpayers Office, Nabha Road, Lahore.
4. **The Assistant/Deputy Commissioner (Audit - I) Inland Revenue**, Range - I - Unit - V, Range - I, Corporate Tax Office, Nabha Road, Lahore.
5. **The Federation of Pakistan** through Secretary Revenue, Islamabad.

.....RESPONDENTS

APPEAL under section 3(2) of the Law Reforms Ordinance, 1972 against the Order dated 07.03.2022 in W.P. No. 47129/2021 passed by a learned Single Bench of this honourable Court

Respectfully submitted:

1. That the Appellant received the Show Cause Notice dated 21.06.2021 under section 122(9) along with the Notice dated 24.06.2021 under section 111(1) ("**impugned Notices**") of the Income Tax Ordinance, 2001 ("**Ordinance**") issued by the Respondents. The same inter alia were assailed before this honourable Court on several grounds, the primary one being that proceedings in terms of section 111 of the Ordinance have a particular modality that is to be followed by the Respondents and that