

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

**PRESENT:**

MR. JUSTICE MUNIB AKHTAR  
MR. JUSTICE SHAHID WAHEED  
Ms. JUSTICE MUSARRAT HILALI

(D))  
**Civil Petition No.2498-L of 2019**  
(Against the judgment dated  
22.4.2019 passed by the Lahore  
High Court, Lahore in I.C.A. No.  
18094/19)

The Commissioner Inland Revenue etc. ... **Petitioners**

**VERSUS**

M/s Chaudhry Steel Re-Rolling Mills etc. ... **Respondents**

For the Petitioners : Mr. Ahmad Pervaiz, ASC  
(via video-link Lahore)

For Respondent No.1 : Mr. Javed Iqbal Qazi, ASC  
(via video-link Lahore)

Date of Hearing : 02.11.2023

**JUDGMENT**

Munib Akhtar, J.: This matter arises under the Income Tax Ordinance, 2001 ("Ordinance") and in relation to the tax year 2016. The impugned judgment is that of a learned Division Bench of the High Court, whereby an appeal filed by the taxpayer (respondent before us) was accepted against the dismissal of its writ petition by a learned Single Judge. That writ petition came to be filed in the following circumstances.

2. The case of the respondent is that the date for the filing of its tax return was 31.12.2016, in terms of s. 118(2)(a) of the Ordinance. Section 119 allows a taxpayer to apply to the Commissioner concerned to extend the date for filing the return, and the latter may do so, in writing, for certain specified reasons or for "any other reasonable cause". Subsection (4) provided at the relevant time, and as material for present purposes, as follows: "An extension of time under sub-section (3) should not exceed fifteen days from the due date for furnishing the return of income ...

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unless there are exceptional circumstances justifying a longer extension of time". The respondent's case is that its application for extension, made on 30.12.2016, was never responded to by the Commissioner. In the event, the return was filed on 15.01.2017.

3. It appears that by the Finance Act, 2015, s. 214D (since omitted) was added to the Ordinance. This provided for the automatic selection for audit, the case of a taxpayer where (in terms of subsection (1)(a)), "the return is not filed within the date it is required to be filed as specified in section 118, or, as the case may be, not filed within the time extended by the Board under section 214A or further extended for a period not exceeding thirty days by the Commissioner under section 119". Since the respondent did not file its return by 31.12.2016 and there was no order of the Commissioner extending the period under s. 119, its case was automatically selected for audit. Seeking to have this selection quashed, the respondent filed a writ petition in the High Court, which was dismissed by a learned Single Judge by order dated 04.03.2019. However, the respondent succeeded on appeal in ICA, in terms of the impugned judgment. The learned Division Bench relied on a decision of the learned Sindh High Court reported as *Commissioner Inland Revenue v Independent Newspaper Corp (Pvt) Ltd* (2018) 117 Tax 527 ("*Independent Newspaper*"). The department now seeks leave to appeal.

4. Learned counsel for the parties stated their respective cases with brevity. For the petitioner department, learned counsel submitted that admittedly the return was not filed within time, nor was there any order of the Commissioner extending the date. The fact that the taxpayer had made an application for extension was of no consequence. Section 214D stood attracted and was applicable. Learned counsel for the taxpayer on the other hand supported the impugned judgment, submitting that it was correct on the facts and in law.

5. We have heard learned counsel as above and considered the record. We begin by considering *Independent Newspaper*. The facts related to the tax year 2005. Thus, it did not involve s. 214D. Nonetheless, the case is instructive. The taxpayer had to file its return by 31.12.2005. It applied for an extension of time under s.

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119 till 31.01.2006 because the accounts had not yet been audited, which was duly granted. The accounts could not be audited by the extended date and the taxpayer made another application for extension, till 01.03.2006. This application was never replied to by the concerned taxation officer, i.e., it was neither accepted nor rejected. Eventually, the return was filed on 18.05.2006. The department sought to levy penalty for alleged late filing in terms of s. 182. This was resisted on the ground that the application for further extension had never been decided, and the department could not take advantage of its own omission, default or non-compliance with the requirements of s. 119, i.e., the non-issuance of an order in writing. It was contended that absent an actual order, it could not be presumed that the request for extension had been turned down. Furthermore, there was no willful default or failure. This position was accepted by the Appellate Tribunal, and upheld by the learned High Court.

6. In our view, *Independent Newspaper* was correctly applied by the learned Division Bench in terms of the impugned judgment. Any audit under s. 177 of the Ordinance imposes onerous obligations and duties on the taxpayer. Subsection (2) of s. 214D had provided that the "[a]udit of income tax affairs of persons automatically selected under sub-section (1) shall be conducted as per procedure given in section 177 and all the provisions of this Ordinance shall apply accordingly". It therefore had to be shown that the concerned taxpayer (here the respondent) came clearly within the scope of subsection (1) (here clause (a) thereof). In our view, the learned Division Bench correctly concluded that that meant, in line with the reasoning set out in *Independent Newspaper*, that if an application for extension in time had been made under s. 119, the same had been rejected in writing. A failure on the part of the Commissioner (or concerned taxation officer) to do so could not imply that it had been rejected. If at all, the presumption should (absent any willful default or other improper reason attributable to the taxpayer) have been the other way round, i.e., that the application had been accepted. Furthermore, the return was in any case actually filed on the last day of the fifteen days stipulated in terms of s. 119(4).

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7. Accordingly, it is our conclusion that no error has been made by the learned Division Bench as would require interference by this Court. Leave to appeal is refused and the petition stands dismissed.



Sd/- J  
Sd/- J  
Sd/- J

Announced in Court on 15 day of May, 2024 at Islamabad

Not approved for reporting

3/8/16/5/24

Sd/- J

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