

**03RD OF 2025 KTBA ONE PAGER
CASE LAW UPDATE
(JUNE 03, 2025)**

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Dear Members,

A brief update on a judgment by the Supreme Court of Pakistan on **“Scope of Rectification; Adjudication of Unanswered Question by Tribunal is not even Remotely within the Contours of Section 57 of the Sales Tax Act, 1990”** is being shared with you for your knowledge. The order has been attached herewith the update.

This update is in line with the efforts undertaken by our **“CASE LAW UPDATE COMMITTEE”** to apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Muhammad Tarique or at the Bar’s numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Ali A. Rahim)
President

(Shams M. Ansari)
Hon. General Secretary

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**SCOPE OF RECTIFICATION; ADJUDICATION OF
UNANSWERED QUESTION BY TRIBUNAL IS NOT EVEN
REMOVED WITHIN THE CONTOURS OF SEC. 57**

Appellate Authority: Supreme Court of Pakistan

Appellant: Chaudhary Steel Furnace

Respondent: CIR, RTO, Sialkot

Section: 57 of the Sales Tax Act, 1990

Detailed judgement was issued on 22.05.2025

Background:

First Round: The order-in-original was passed against the taxpayer, which was maintained by the Commissioner Inland Revenue (Appeals). However, in second appeal before the Appellate Tribunal relief was allowed to the taxpayer and the appeal was accepted. Against the ATIR order, Department approached the High Court in reference jurisdiction, which was decided in favor of the Department and against the taxpayer. Though, the taxpayer filed appeal before the Supreme Court, but the same was withdrawn.

Second Round: While the appeal before Supreme Court was withdrawn, the taxpayer filed a miscellaneous application before the Tribunal, seeking rectification of its earlier order, arguing that the Tribunal had overlooked key legal and factual issues related to tax liability determination. The Tribunal accepted the application and modified its previous decision, ruling in favor of the petitioner and cancelled both the original and appellate orders. In response, the department challenged this rectification order of the ATIR in the Lahore High Court, contending that the Tribunal lacked the jurisdiction to modify its earlier order. The reference was accepted, siding with the department. The taxpayer then filed a Civil Petition for Leave to Appeal against this High Court decision.

The premise of the CPLA was built upon the argument that while deciding the case against the taxpayer, the High Court in the first round of litigation, decided two questions of law and declined to answer the third question of law as Tribunal failed to adjudicate the third in the first place. To get adjudication of unanswered question of law, taxpayer filed application for rectification of Tribunal's order under Section 57 of the Sales Tax Act, 1990.

First Ruling:

Application In Decided Appeal Was Misconceived

The Supreme Court found there was no ambiguity left in the High Court judgment in the first round for the taxpayer to have a reason to file fresh application before the Tribunal. A key legal question remained unanswered by the Tribunal and thus was also not addressed during reference proceedings. No request to address this issue was made either in the reference by the respondent department or during the withdrawal of CPLA No. 3717/2017. The taxpayer filed an application before the Tribunal in an appeal that had already been fully disposed of by order dated 28-05-2018. The application was misconceived.

Second Ruling:

Scope of Rectification

The SCP noted that a rectification of mistake could be amended/rectified by an order passed by the Tribunal, which mistake is apparent on the face of the record. However, it does not enlarge the scope of the Tribunal to render a complete and altogether different decision, independent of the earlier "view" as expressed.

Third Ruling:

SCP noted that application for rectification essentially seeks further adjudication in the shape of rectification of an unanswered question. Hence, SCP held that the adjudication of unanswered question by Tribunal is not even remotely within the contours of section 57 of the Sales Tax Act, 1990.

CONCLUSION:

The scope of Rectification under Sales Tax law has been narrowed down whereafter the taxpayers and their legal practitioners will have to revisit their approach towards rectification jurisdiction. The 'Tribunal cannot act as an appellate forum of its own order' which is settled in the reported judgment as 2007 PTD 967.

DISCLAIMER:

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings would not be binding on KTBA.

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petition No. 312 of 2025

*[Against the judgment dated 17.12.2024 of
the Lahore High Court, Lahore passed in
STR No.39113/2019]*

M/s Chaudhary Steel Furnace. ... Petitioner

Versus

*Commissioner Inland Revenue, Sialkot Zone,
Regional Tax Office, Sialkot. ... Respondent*

For the Petitioner: Mr. Muhammad Ali Raza, ASC.

For the Respondent: Mrs. Kausar Parveen, ASC.
Dr. Ishtiaq Ahmed Khan,
Director-General (Law), FBR.

Date of Hearing: 22.05.2025.

ORDER

Muhammad Shafi Siddiqui, J. For the purposes of our consideration the matter triggered when show cause notice dated 06.06.2012 issued by the Inland Revenue officer, out of which Order-in-Original No.29/2012 dated 31.12.2012 was passed against the petitioner.

2. Aggrieved of it, the petitioner filed an appeal before the Commissioner Inland Revenue, (Appeals), Gujranwala, which was dismissed *vide* Order-in-appeal dated 21.02.2013. The petitioner being aggrieved of the Order-in-Original and Order-in-Appeal preferred an appeal (STA No.401/LB/2013) before the Appellate Tribunal Inland Revenue, Lahore Bench, Lahore (**'the Tribunal'**) and *vide* order dated 28.08.2013, the appeal was accepted and

decided in favour of the petitioner and the orders below were set aside and FIR registered against the petitioner was ordered to be quashed.

3. The respondent thereafter being aggrieved of the order of the Tribunal filed Sales Tax Reference No. 15/2014 before the Lahore High Court, which was partially allowed and decided alongwith another connected reference raising same questions of law. The references were decided *vide* order dated 11.05.2017 in favour of the respondent-department.

4. It is at this point the learned counsel attempted to make a point that two questions of law in favour of respondent-department were answered, whereas, the High Court declined to answer the third question of law on the basis of the order of the Tribunal as it (Tribunal) made a reference to Clause 42(b) of STGO No.3/2004, but did not give specific findings as to violation of said provisions. This being the bone of contention, the petitioner preferred CPLA No.3717/2017 against the aforesaid order passed in reference jurisdiction, however, it was withdrawn *vide* order dated 14.01.2020, whereas, he separately for a parallel recourse filed an application (M.A (R) No.254/LB/2018) before the Tribunal in same disposed of STA No.401/LB/2013 for fixation/rectification of the previous order of the Tribunal dated 28.08.2013 to the extent of question of law and fact regarding failure of the respondent-department in determining the liability under normal tax regime, which claimed to have been overlooked by the Tribunal in the first round of litigation. Being influenced by the contention so raised, the Tribunal on such application, which is primarily for the fixation of the said appeal, modified its order *vide* order dated 12.10.2018 in favour of the petitioner and against the respondent-department and both order-in-original and first appellate order stand vacated/cancelled, though it was taken to its logical end up to this Court. As against the order on the said Miscellaneous

application for fixation of the appeal, the respondent-department preferred a reference being STR No.39113/2019 on the ground that rectification jurisdiction (as explained) could not have been exercised by the Tribunal. The Sales Tax Reference was accepted *vide* order dated 17.12.2024 by a Division Bench of the Lahore High Court, Lahore deciding the question of law in favour of the respondent-department against which the instant CPLA was filed by the petitioner.

5. The first and primary contention of the counsel for the petitioner was that the order of the High Court passed in STR No.11/2014 dated 11.05.2017 wherein the court declined to answer third question, was in fact a remand order, which had saddled the Tribunal with a responsibility to decide the question which remained unanswered in the first round of litigation. The second contention was that the Tribunal was justified in considering the application for fixation of appeal, as being application for rectification of the order.

6. We have heard the learned counsel and perused the material available on record. We do not find any ambiguity in the order of the Division Bench of the High Court passed in STR No.11/2014 as it is not a remand order nor did it revive the appeal decided by the Tribunal in the first round of litigation. One of the questions remained unanswered by Tribunal which consequently was not answered by the court exercising reference jurisdiction. Neither any request was made in a reference filed by the respondent-department nor at the time of withdrawal of the CPLA No.3717/2017 before this Court. The petitioner on its own moved an application for fixation of the appeal which appeal was never in existence, as it was disposed of *vide* order dated 28.05.2018 in its totality. When the application for fixation of appeal was filed we failed to understand that there was no *lis* pending and nothing could

have been fixed for any leftover issue and hence the only way the Tribunal conceived it is by way of rectification application. Even the newly inserted (June, 2013) section 57 of the Sales Tax Act, 1990 ('**the Act**') has its limitation in terms of the rectification sought. It is to be noticed that its retrospective effect was not questioned before the Tribunal and hence we would not comment. Indeed, a rectification of mistake could be amended/rectified by an order passed by the Tribunal which mistake is apparent on the face of the record, however, it does not enlarge the scope of the Tribunal to render a complete and altogether different decision, independent of the earlier "view" as expressed. For the sake of convenience, section 57 of the Act is reproduced as under:

'[57. Rectification of Mistake.-

(1) The officer of Inland Revenue, Commissioner, the Commissioner (Appeals) or the Appellate Tribunal may, by an order in writing, amend any order passed by him to rectify any mistake apparent from the record on his or its own motion or any mistake brought to his or its notice by a taxpayer or, in the case of the Commissioner (Appeals) or the Appellate Tribunal, the Commissioner.

(2) No order under sub-section (1) which has the effect of increasing an assessment, reducing a refund or otherwise applying adversely to the taxpayer shall be made unless the taxpayer has been given a reasonable opportunity of being heard.

(3) Where a mistake apparent on the record is brought to the notice of the officer of Inland Revenue, Commissioner or Commissioner (Appeals), as the case may be, and no order has been made under sub- section (1), before the expiration of the financial year next following the date on which the mistake was brought to their notice, the mistake shall be treated as rectified and all the provisions of this Act shall have effect accordingly.

(4) No order under sub-section (1) shall be made after five years from the date of the order sought to be rectified.]'

Although it was an application for fixation of the appeal, but essentially it seeks further adjudication in the shape of rectification of an unanswered question which is not even remotely within the contours of section 57 of the

Act. The Tribunal acted as an appellate forum of its own order, which is not sustainable in law.¹

7. In view of the foregoing discussion, we do not find any error in the order passed by the High Court in reference jurisdiction and decline to grant leave to appeal. Consequently, this petition is dismissed.

Chief Justice

Judge

Judge

Islamabad:
22.05.2025
[**]

¹ Commissioner of Income Tax, Karachi v. Abdul Ghani (2007 PTD 967).