KTBA Karachi Tax Bar Association

37th KTBA ONE PAGER CASE LAW UPDATE (March 18, 2024)

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Dear Members,

A brief update on a recent judgment by the Appellate Tribunal Inland Revenue, Lahore on **"Commissioner Appeals can confirm, modify or annul but cannot Remand back the case Annexure-F is not a statement of taxpayers and should not be used to determine his income tax liability"** 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. Shams Ansari or at the Bar's numbers 021-99212222, 99211792 or email at info@karachitaxbar.com&ktba01@gmail.com

(Syed Zafar Ahmed)
President

(M. Mehmood Bikiya)
Hon. General Secretary

37th KTBA ONE PAGER
CASE LAW UPDATE
(March 18, 2024)

COMMISSIONER APPEALS CAN CONFIRM, MODIFY OR ANNUL BUT CANNOT REMAND BACK THE CASE.

ANNEXURE-F IS NOT A STATEMENT OF TAXPAYERS AND SHOULD NOT BE USED TO DETERMINE HIS INCOME TAX LIABILITY

Appellate Authority: Appellate Tribunal Inland Revenue
Petitioner: KBS Steel Furnace
Legal Provisions: Sections 111(1)(c), 122(1), 122(9) of the Income Tax Ordinance, 2001

Judgment was issued on May 10, 2022 (2023 PTD 467)

BACKGROUND: Taxpayer received a show cause notice to explain as to why the difference between values of closing stock declared in Annexure-F of sales tax return as compared to the value declared in the return of income may not be added to its income under section 111(1)(c) of the Ordinance. The submissions made by the taxpayer could not satisfy the tax officer who passed the order under section 122(1) of the Ordinance. Taxpayer filed appeal before the Commissioner Appeals, who remanded back the case for de-novo proceedings.

Decision of the ATIR:
First Ruling of the ATIR: The Appellate Tribunal held that the CIRA was not vested with the power to remand the case back for de-novo consideration and by doing so the CIRA travelled beyond the mandate of law. A plain reading of section 129 of the Ordinance manifest that the CIRA is only empowered to confirm, modify or annul the assessment order. It was further held that plain, clear and direct meaning is given to words which are used in common parlance by the general public to which such law is applicable. Reference in this regard was placed on case laws reported as 2017 PTD 1663 and 2013 PTD (Trib.) 1288.

Second Ruling of the ATIR: Section 111 can only be invoked through independent, specific and separate notice. It was further held that section 111 of the Ordinance provides to make addition in respect of unexplained income / assets of a person in case no explanation is offered by the person. Such explanation can only be offered in presence of a notice issued under the same section. Therefore, addition under section 111 cannot be made without issuance of independent, specific and separate notice. Reliance in this regard was placed on a judgment of Lahore High Court in case of Faqir Hussain and other (2019 PTD 1828) wherein it was held that failure to issue a separate notice under section 111 may lead to render the proceedings as against the intent of law.

Third Ruling of the ATIR: Annexure-F cannot serve as a stock statement and cannot be used to create tax liabilities by the tax department Regarding the discrepancy between stock declared as per return of income and as per Annexure-F, the ATIR ruled that the said annexure is only meant for summary of input tax and excess carry forward of sales tax credit. The said annexure, in its current format, can never serve the purpose of a stock statement and therefore, cannot be made basis to create tax liabilities by the tax department.

Conclusion:
Section 129 of the Ordinance suggests that the CIRA can only confirm, modify or annul the assessment order and is not empowered to remand the case back to assessing officer. ATIR also held separate notice under section 111 is required to be issued to invoke the provisions of the said section. Annexure-F of sales tax return cannot be equated with the stock statement of the taxpayers and cannot be used to create tax liabilities by the tax department.

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Dear Members,

A brief update on a recent judgment by the Appellate Tribunal Inland Revenue, Lahore on **"Commissioner Appeals can confirm, modify or annul but cannot Remand back the case Annexure-F is not a statement of taxpayers and should not be used to determine his income tax liability"** is being shared with you for your knowledge. The order has been attached herewith the update.

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Best regards

(Syed Zafar Ahmed)	**(M. Mehmood Bikiya)**	**(Shams M. Ansari)**
President	Hon. General Secretary	Convener: Case Law Update Committee

Citation(s): 2023 SLD 816 = 2023 PTD 467

Appellate Tribunal Inland Revenue

I.T.A. No.3228/LB of 2022, decided on 3rd October, 2022. Date of hearing: 19th September, 2022.

NASIR MAHMUD, JUDICIAL MEMBER AND ANWAAR UL HAQUE, ACCOUNTANT MEMBER

MESSRS KBS STEEL, GUJRANWALA

VS

THE COMMISSIONER INLAND REVENUE, LTO, LAHORE

M. Babar Zaman Khan and Abuzar Hussain for Appellant.

Hassan Mabroor, D.R. for Respondent.

(a) Income Tax Ordinance (XLIX of 2001)---

----Ss.122, 111, 35---Sales Tax Rules, 2006, R.14---Amendment of assessment---Unexplained income or assets---Stock-in-trade vis- -vis Annexure F of sales tax return (carry forward summary)---Scope---Appellant in Annexure F of its sales tax return declared its closing stock of Rs. 1.3 billion whereas it had declared the closing stock in its income tax return to be Rs. 1.115 billion---Assessing Officer treated the difference of Rs. 185 million as expenditure on excess purchases, having not been declared in income tax return---Validity---Data as given in Annexure F of sales tax return was basically a summary of input tax which could not be made basis for calculating stocks held on a particular date to make its comparison with that of stock-in-trade as declared in income tax return---Annexure F was only meant for summary of input tax and excess carry forward amount of sales tax credit---None of the provisions of Sales Tax Act, 1990, or of the Income Tax Ordinance, 2001, had purported to deem these figures of carry forward summary to be the closing stocks---Such could not be equated with stock statement of a taxpayer on the whims and wishes of the department for creating concurrent tax liabilities under two separate statutes having different standards of reporting stocks and inventory---Appeal of the taxpayer was allowed and the orders passed by the authorities were vacated.

(b) Income Tax Ordinance (XLIX of 2001)---

----Ss.129, 122---Decision in appeal---Scope---Language of S.129(1)(a) only empowers the Commissioner (Appeals) to confirm, modify or annul the assessment order and exception whereof is enumerated in Cl. (b) of S. 129(1), which empowers the Commissioner (Appeals) to make such order as he thinks fit---Express language of law has unequivocally prescribed power of Commissioner (Appeals) under S. 129 while dealing with the assessment order and explicitly describes Commissioner (Appeals) powers while dealing with other cases---Section 129 unequivocally eclipses and restricts the power of Commissioner (Appeals) to confirm, modify or annul the assessment.

PLD 1965 SC 434; 1975 SCMR 221; 1976 SCMR 388; 1987 CLC 2425; PLD 2003 SC 271 and 2001 SCMR 838 ref.

(c) Income Tax Ordinance (XLIX of 2001)---

----Ss.129, 122---Decision in appeal---Remand---Scope---Where matter in issue is an assessment order then resort can only be have to S. 129(1)(a)---Said provision unequivocally eclipses and restricts the Commissioners scope of power to confirm, modify or annul the assessment and the Commissioners decision cannot go beyond the ambit of assessment.

PLD 1965 SC 434; 1975 SCMR 221; 1976 SCMR 388; 1987 CLC 2425; PLD 2003 SC 271 and 2001 SCMR 838 ref.

(d) Income Tax Ordinance (XLIX of 2001)---

----Ss.129, 122---Decision in appeal---Remand---Scope---Order passed under S. 122 creating liability is an assessment order for all intents and purposes and can only be dealt under Cl. (a) of S. 129(1) and binds the Commissioner (Appeals) only to confirm, modify or annul the assessment order and does not in any manner confer jurisdiction on the Commissioner (Appeals) to remand the matter to the assessing officer.

Dewan Textile Mills Ltd. v. ACIR-B Audit D-1 LTU Karachi 2017 PTD 1663 and 2013 PTD (Trib.) 1288 ref.

(e) Income Tax Ordinance (XLIX of 2001)---

----S.129---Decision in appeal---Remand---Scope---Remand should not be directed in a light vein---In ultimate analysis, a remand neither favours the revenue nor the assessee---In revenue matters, without an exception after remand the fate of an assessee never changes for the better---In most of the cases the remand order is rather employed by the assessing officer to make the fate of assessee even worse---All previous discrepancies are meticulously taken care of so that the assessee finds no favourable factual or legal proposition to urge before the appellate forum.

(f) Income Tax Ordinance (XLIX of 2001)---

----Ss.111, 35---Unexplained income or assets---Stock-in-trade---Purchasing excess stock; an investment or expenditure---Scope---If any difference of declared stock is found or is effectively unearthed through audit or otherwise, it cannot be added as expenditure under S.111(1)(c)---Stocks ought to be added in investment, money, assets or valuable articles owned by a person whose sources are not adequately explained by him but it cannot be added towards his expenditures---Genuinely, if any misappropriation of stocks is found by comparing the declarations made under the Income Tax Ordinance, 2001, with that information available in sales tax record then its addition can be made under S. 111(1)(b) of the Income Tax Ordinance, 2001 and the provisions of S. 111(1)(c) are least relevant on the subject---Stocks are physically tangible in trade or business whereas expenditures are irretrievably gone into costs of goods.

PLD 1982 Kar. 684 ref.

(g) Income Tax Ordinance (XLIX of 2001)---

----S.35---Stock-in-trade---Meaning---Stock-in-trade means anything produced, manufactured, purchased or otherwise acquired for manufacture, sale or exchange, and any material or supplies to be consumed in the production or manufacturing process, but does

not include stocks and shares.

(h) Interpretation of statutes---

----Strict rule of interpretation----Scope---Strict rule of interpretation mandates that plain, clear and direct meaning is given to words which are used in common parlance by the general public to which such law is applicable---No presumption with respect to a particular meaning---Particular meaning cannot be given to a word which is not clear by making a presumption that particular meaning is the intention of the legislature---Court cannot under the guise of possible or likely intention of the legislature give meaning to the words which are not clear and where contextual meaning cannot be made out.

(i) Words and phrases---

----Expenditure---Meaning---Expenditure is what is paid out or away and is something which is gone irretrievably.

PLD 1982 Kar. 684 rel.

ORDER:
NASIR MAHMUD, JUDICIAL MEMBER:---.---

The titled appeal has been filed at the instance of M/s. KBS Steel Furnace, (the taxpayer/appellant) calling in question the Order dated 10-05-2022 passed under section 129(1) of the Income Tax Ordinance, 2001 (the Ordinance, 2001) by the learned Commissioner Inland Revenue (Appeals), Lahore.

2. The succinct facts of the case are that perusal of sales tax return for June, 2019 has revealed that appellant has declared closing stocks of Rs.1,300,453,000/- in its Annexure F attached therewith conversely; closing stock-in-trade as declared in income tax return is Rs.1,115,453,000/- leaving a difference of Rs.185,000,000/- on this account. It is pertinent to mention here that closing stocks for the corresponding tax period of previous year as declared in Annexure-F of sales tax return for June, 2018 works to be Rs.954,625,326/-. That shows that appellant has incurred expenditure on excess purchases of Rs.185,000,000/- in the year under consideration having not been declared in income tax return. Based on this, a show-cause notice under section 122(9) of the Ordinance, 2001 was issued requiring the appellant to explain the sources of these excess purchases failing which the suppressed purchases may not be added to his income under section 111(1)(c) of the Ordinance, 2001.

3. Having received a reply from the appellant the adjudication, proceedings before the learned Assistant/Deputy Commissioner Inland Revenue culminated into an order dated 28-2-2022 and addition of 185,000,000 passed under section 122(1) of the Ordinance, 2001.

4. The appellant felt aggrieved and first appeal was preferred before the Commissioner Inland Revenue Appeals who after adverting to averments of the appellant annulled the assailed assessment order and remanded the case for de novo consideration vide Order-in-Appeal dated 10-05-2022 in exercise of power under section 129(1) of the Ordinance, 2001. Feeling aggrieved by this treatment, the appellant has preferred instant second appeal before this Tribunal on facts and grounds enumerated in the memo of appeal.

5. The learned counsel of the taxpayer at the very outset contested the veracity of the show-cause notice and consequent orders. The learned counsel averred that learned

Commissioner of Appeals in matters involving assessment may pass such order as to confirm, modify or annul assessment order, after examining such evidence as required by him; and that he cannot remand the case for de novo consideration. It is averred that under the provisions of clause (a) of subsection (1) of section 129 of the Ordinance, 2001, an appeal case can either be confirmed, modified or annulled assessment order, but cannot be remanded back for de novo consideration to original assessing authority to afford an opportunity to fill out lacunas and to improve flagrant errors occurred therein. It is averred that the learned Commissioner of Appeals has no powers to Remand Back the case for De novo Consideration which is illegal and unlawful due to prohibition expressly provided in the provisions of clause (a) of subsection (1) of section 129 of the Ordinance, 2001. The learned counsel referred and relied on various judgments of superior courts [PLD 1965 SC 434], [1975 SCMR 221], [1976 SCMR 388], [1987 CLC 2425], [PLD 2003 SC 271] and [2001 SCMR 838].

6. The learned counsel further averred that the appellant has been condemned unheard in negation to the principles of natural justice. The learned Inland Revenue Officer was not justified to issue order without providing a proper opportunity of being heard. As such, impugned order has been passed illegally against the facts of the case and needs to be deleted. He relies on the reported judgments that no one should be condemned unheard as the superior courts have laid great emphasis on it. The learned counsel averred that guidance can also be sought from the cases reported as (2012 PTD (Trib) 202), [2010 PTD 704], [2008 PTD 1691), (1994 SCMR 2232). [PLD 1990 SC 666], (PLD 1964 SC 673), [1988 CLC 1318], [1981 CLC 909], [1981 CLC 1654] and 2010 PTD (Trib.) 2219.

7. It is further averred that the provisions of section 122 of the Ordinance, 2001 starts with Subject to this section which restricts all further proceedings of amendment of an assessment. It can only be amended if they are covered by the provisions of this section. So before going further one should keep in mind that amendment for which the section has been prescribed cannot be made if the requirement and qualification prescribed therein are not completed before making such amendment of the assessment as held in a case reported at [2007 PTD (Trib.) 2601]. Although, the Inland Revenue is not competent to assume and to exercise jurisdiction under section 122(5) of the Ordinance, 2001 without acquiring definite information through audit or otherwise. There is no cavil to the proposition of law that where assumption and exercise of jurisdiction is subject to fulfillment of statutory condition or existence of certain specified circumstances then those conditions must be obeyed accurately and strictly and those circumstances must exist. No definite information is acquired through audit or otherwise as its mention is not found in the impugned order or the notice under Section 122(9) of the Ordinance, 2001 without which jurisdiction under section 122(5) of the Ordinance, 2001 cannot be exercised. The act performed disregard to those conditions or circumstances would be void ab initio and without lawful jurisdiction. The defective assumption/exercise of jurisdiction and eventual judgment has no locus standi in the eyes of law. The learned counsel placed reliance on [2010 SCMR 1746], [2006 SCMR 129] and [1971 SCMR 681].

8. The learned counsel further averred that the Order under sections 122(1) and 122(5) of the Ordinance, 2001 was passed without issuing a notice under Rule 68 of the Income Tax Rules, 2002 which is a mandatory prerequisite for assuming jurisdiction under section 122 of the Ordinance, 2001. The learned counsel placed reliance on the following judgments reported as [1971 SCMR 681], [2001 PTD 1633 HC], [2013 PTD (Trib.) 1335], [2006 PTD (Trib.) 429], [2011 PTD (Trib.) 321] and [2011 PTD Tribunal 1820].

9. The learned counsel emphasized that until and unless specific and relevant subsection of section 122(5) of the Ordinance, 2001 is not selected/ticked, the Assessing Officer could not

assume the jurisdiction for amending any assessment order. The selection/Ticking of a relevant subsection of section 122(5) is a sine qua non for assumption of jurisdiction to amend or to further amend any assessment order. Reliance in this regard is placed on the reported judgments of the apex Court [2002 PTD 2160], [2006 PTD 673], [2006 PTD 2729] and [2007 PTD 2319]. The Appellate Tribunal hold the same preposition in orders reported as [2008 PTD (Trib.) 1549], [2009 PTD (Trib) 1919], [2011 PTD (Trib) 2435], [2002 PTD (Trib) 1337], [2009 PTD (Trib) 1963], [1997 PTD 47], [2000 PTD (Trib) 2531] and [2013 PTD (Trib) 10].

10. The learned counsel averred that likewise, making of addition on account of alleged suppressed purchases of Rs.185,000,000/- by the Inland Revenue Officer under section 111(1)(c) of the Ordinance, 2001 without giving any specific separate notice is illegal, unlawful and without any justification. He relied upon the reported judgments [2012 PTD 790] and [2015 PTD 1242] wherein it is resolved that addition under section 111(1)(c) of the Ordinance, 2001 cannot be made without providing opportunity of hearing to the appellant as enunciated in the principle audi alteram partem, as reported in [2010 PTD 704 (SHC)]. The learned while reaffirming placed reliance on a very specific judgment of the August Supreme Court of Pakistan rendered in the case titled The Commissioner Inland Revenue, Zone Bahawalpur v. M/s. Bashir Ahmed, Fort Abbass passed in 2021 SCMR 1290 = 2021 PTD 1182.

11. The learned counsel iterated that the impugned order for addition in terms of section 111(1) (c) of the Ordinance, 2001 is quite against the facts of the case. The Order passed under section 122(1) read with section 122(5) of the Ordinance, 2001 by making an addition of Rs.185,000,000/- under section 111(1)(c) of the Ordinance, 2001, treating the stock-in-trade as expenditure whereas, expenditure is what is paid out or away and is something which is gone irretrievably as defined in judgment reported as [PLD 1982 Kar. 684]. Based on this, if any difference on account of stocks declared for the purpose of income tax and sales tax is found it cannot be added under section 111(1)(c) of the Ordinance, 2001 because it deals with expenditures and not with unexplained investment, money, assets or valuable articles owned by a person whose sources cannot explained adequately.

12. The learned counsel has emphatically argued that the summary of input tax as given in annexure F of sales tax return cannot be made basis for calculating stocks held on a particular date which in this case is 30th June, 2020 to make its comparison with that of closing stock-in-trade as declared in income tax return for this very tax year. The statistics as given in annexure F of sales tax return cannot be termed as stock-in-trade of a person who is registered for sales tax as well as income tax purposes. The learned counsel explains that the summary of input tax as shown in annexure F of sales tax return inter alia contains certain legal flaws and factual lacunas which are always existed to halt the Inland Revenue Officers to treat the statistical data so worked out on the basis of input tax summary to be stock-in-trade of a registered taxpayer in the presence of these factual and statistical infirmities no comparison of stocks worked out on the basis of input tax summary as given annexure F of sales tax returns can be made with that of stock-in-trade shown in income tax return. The learned counsel pointed that annexure F fails to cater the following tax situations:-

(i) The annexure F of sales tax returns inter alia includes sales tax paid on plant and machinery, replacement parts, store and spare and other capital goods, etc which never becomes part of closing stocks of a registered taxpayer, however; its cost is capitalized for the purpose of income tax declarations.

(ii) Similarly, sales tax paid on electricity, gas and other utilities which cannot otherwise; be stored or stocked are also included in the summary of input tax as given in annexure F of sales tax return but it has no nexus with the goods, declared as stock-in-trade for the purpose of income tax.

(iii) It does not take into account debit and credit adjustment made in sales tax invoice as a result of a change in the nature of supply or change in value of supply or some such event the amount shown in the tax invoice needs to be modified, there shall always be issued a debit and a corresponding credit note to make necessary amendments therein. The debit and credit adjustments made in invoice under section 9 of the Sales Tax Act, 1990 are not catered into the summary of input tax as given in its annexure F.

(iv) Any input tax credit not adjusted in sales tax return for a tax period due to prohibition of 90 percent adjustment of input tax needs to be carried forward under the provisions of 8B of the Sales Tax Act, 1990 finds no place in annexure F of sales tax return. This input tax credit not adjusted in the relevant month becomes a part of input tax for the next month but it is not taken into account automatically in annexure F of sales tax return.

(v) The annexure F only takes into account input tax as given in annexure A and annexure B of the sales tax return whereas any input tax incurred on account of tax paid at import stage as reflected in annexure K of sales tax return has not automatically appeared in annexure F. The annexure K is the separate declaration of imports made on special rates of tax for import of re-meltable iron and steel scrap in respect of which input tax is allowed to a registered steel melter and steel re-roller under the Special Procedure for steel sector.

(vi) The annexure F never take into account sales and purchases of exempt goods as declared in sales tax return. No stocks could be worked out without taking into account total sales and purchases made during a tax period whether taxable or exempt from sales tax. The situation where exempt goods not subject to levy of sales tax are involved or partially involved is not catered into this summary of input tax automatically as no input tax is incurred on purchase of exempt goods.

(vii) Similarly, it is not out of context to mention here that purchases or imports made at zero percent rate of sales tax or under Duty and Tax Remission Scheme (DTRE) are not appeared in purchases viz-a-viz input tax summary as given in annexure F. Conversely, all type of purchases is included in income tax declaration and towards stocks as declared for the purpose of income tax.

(viii) The purchases made from unregistered persons are not automatically fetched into the summary as given in annexure F of the sales tax returns whereas all type of purchases whether made from registered or unregistered persons becomes the part of cost of goods meant for sales in income tax declarations.

(ix) Nottheless, in case of goods purchased on auction, only treasury challan in his name bearing his sales tax registration number showing payment of sales tax is admissible for input tax adjustment or credit thereof under clause (iii) of subsection (2) of Section 7 of the Sales Tax Act, 1990. Conversely its proportionate purchases and input tax thereof are not automatically appeared in annexure F of the sales tax return.

(x) On the other hand, stocks for the purpose of income tax does include raw material, work-in-process and finished goods left unsold on certain point of time which may be 30th June of a tax year, whereas the summary of input tax as given in annexure F inter alia includes raw materials but does not include the goods work-in-process, semi finished goods

or the finished goods.

(xi) The summary of input tax as given in annexure F of sales tax return includes the input tax paid on the assessed duty paid value of imported goods as ascertained by the Customs authorities whereas for the purpose of income tax actual landed cost of such imported goods are booked into towards cost of goods meant for sales in income tax return.

(xii) Input tax when non-credited due to prohibition of its adjustment under Section 8(1) (a) or 8(1) (b) or 8(1) (i) and (h) or under any other of its provisions or any notification issued by the Federal Government in exercise of powers under Section 8(1) (b) of the Sales Tax Act, 1990 are given effect in Annexure F, whereas, these purchases constitute part of cost of goods sold in income tax declarations.

(xiii) Similarly, debit and credit adjustment made after expiry of 180 days of issuance of tax invoice or submission of sales tax return, no amendment can be made for the purpose of sales tax however; in case of return of goods or due to some other event, the amount shown in invoice or in sales tax return cannot be modified whereas this adjustment can always be made for the purpose of income tax till the filing of its return for a tax year.

(xiv) Nevertheless, cost of goods meant for sales as declared for the purpose of income tax does include incremental expenses incurred after its purchase or as the case may be imports whereas the expenses like carriage expenses, loading and unloading expenses, etc being non-taxable are not included in value of purchases or imports shown in annexure F of the sales tax return.

13. The learned counsel iterated that based on above instances, it is established on record that the order under section 122(1) coupled with section 122(5) of the Ordinance, 2001 has been passed without examining the veracity of facts and figures appearing in Annexure-F of sales tax return which can never constitutes value of closing stocks because two records viz. under income tax and sales tax are maintained and kept on set of principles different from each other. To further elaborate his argument the learned counsel explains that, income tax return is based on accounting records maintained on the basis of relevant International Financial Reporting Standards/Corporate laws; whereas transactions are reported in the sales tax records strictly in accordance with the provisions of the Sales Tax Act, 1990. So, the former has its own recognition/valuation principles and the later prescribes its own requirements for reporting of purchases, supplies, stocks, etc. Although the records under two different statutes could be compared analytically, yet the results of such analytics cannot directly be used for drawing any adverse inference as to the loss of government revenue, unless specific identification of such basis is confronted to the taxpayers. Additionally, the charges against a taxpayer on arbitrary basis and merely on the basis of suspicions, surmises and conjectures are not tenable in the eyes of law as well as in the light of decisions of the superior courts.

14. The learned counsel added that this Tribunal has held in its earlier judgments that the annexure F attached with sales tax return cannot be made basis for calculation of stocks of a registered taxpayer on certain point of time. This annexure is meant for summary of input tax as well as excess carry forward amount of sales tax credit. None of the provisions of the Sales Tax Act, 1990 or of the Income Tax Ordinance, 2001 has purported to deem the figures of carry forward summary to be closing stocks for the purpose of assessment of income tax as held in case of Mr. Arshad Shark, C/o M/s. A,A Pipes Industries, Lahore in I.T.A No.764/LB/2015. The learned counsel seeks and pleaded for same relies as granted by this Tribunal.

15. The learned DR appearing on behalf of the Revenue opposes the appeal and argued that the order passed by the Commissioner Inland Revenue (Appeals) has applied his judicial mind in the given facts the order passed is reasoned and just and merits to be sustained. The learned DR when confronted to legal infirmities pointed by the appellant, he failed to offer and satisfactory reply to the same. The learned DR however, reiterated reasons so enumerated in the orders passed by the officers below and pleaded for the dismissal of appeal,

16. Heard. We have assiduously examined the case record and have heard at length the arguments of the rival parties. The foremost legal defect as pointed that the learned Commissioner of Appeals cannot remand the case for de novo consideration without any lawful excuse. The scheme of law and under the existing provisions of law, learned Commissioner of Appeals in matters pertaining to assessment may pass such an order to confirm, modify or annul an assessment order, after examination such evidences as required by him respecting the matters arising in appear or causing such further enquires to be made as he deem fit; but shall not remand the case.

17. In order to ascertain strength in the arguments qua jurisdiction/legality of remand and for ease of reference, relevant excerpt of Section 129 is reproduced as under;

Section 129 Decision in Appeal:-

(1) In disposing of an appeal lodged under section 127, the Commissioner (Appeals) may:-

(a) Make an order to confirm, modify or annul the assessment order, after examining such evidence as required by him respecting the matters arising in appeal or causing such further enquiries to be made as he deems fit; or

(b) In any other case, make such order as the Commissioner (Appeals) thinks fit.

(2)

(3)

(4)

Provided

Provided

18. We have taken into consideration the plane language of section 129 of the Ordinance, and there remains no ambiguity in our mind that the language of section 129(a) only empowers the Commissioner Inland Revenue Appeals to confirm modify or annul the assessment order and exception whereof in other case (other than assessment Order) is enumerated in clause (b) of section 129 of the Ordinance, which empowers the Commissioner Inland Revenue Appeals to make such order as Commissioner Inland Revenue Appeals thinks fit. The express language of the law has unequivocally prescribed power of Commissioner Inland Revenue Appeals under section 129 while dealing with the assessment order and explicitly describes Commissioner Inland Revenue Appeals powers while dealing with other case.

19. We have examined Commissioner Inland Revenue Appeals decision in the perspective of Section 129 and it is manifest that the matter in issue was an assessment Order and in

such an eventuality, only resort to power described under section 129(1)(a) of the Ordinance could lawfully be made. This provision unequivocally eclipse and restricts Commissioner Inland Revenue Appeals scope of power to confirm, modify or annual the assessment and the Commissioner Inland Revenue Appeals decision cannot be deemed to be outside the ambit of assessment. Since the Order impugned before the Commissioner Inland Revenue Appeals was made under section 122 of the Ordinance, so it will be feasible for ease of reference to reproduce definition of assessment as given Section 2(5) of the Income Tax Ordinance;

Section 2(5) Assessment includes (provisional assessment,) re-assessment and amended assessment and cognate expressions shall be construed accordingly

The fate of the Commissioner Inland Revenue Appeals order of remand rests on single point that if order passed by the assessment officer under section 122 is not assessment Order then the Commissioner Inland Revenue Appeals is clothed with the power to pass order as he thinks fit. However, the order passed by the assessing Officer under section 122 of the Ordinance if read in conjunction with the definition of assessment provided in section 2(5) of the Ordinance, there remains no vagueness that the order passed under section 122 of the Ordinance creating liability is an assessment order for all intents and purposes and can only be dealt under clause (a) of Section 129(a) and binds the Commissioner Inland Revenue Appeals only to confirm, modify or annul the assessment order and does not in any manner confer jurisdiction on the Commissioner Inland Revenue Appeals to remand the matter to the assessing Officer.

The issue qua Power of remand under section 129 of the Ordinance has also been dealt and decided in case reported as 2017 PTD 1663 Dewan Textile Mills Ltd. v. ACIR-B Audit D-1 LTU Karachi and 2013 PTD (Trib.) 1288. Moreover, the Strict Rule of Interpretation is one of the Principles used to interpret fiscal and penal statutes. According to the rule, plain, clear and direct meaning is given to words which are used in common parlance by the general public to which such law is applicable. There can be no presumption with respect to a particular meaning. A particular meaning cannot be given to a word which is not clear by making a presumption that particular meaning is the intention of the legislature. Court cannot under the guise of possible or likely intention of the legislature give meaning to the words which are not clear and where contextual meaning cannot be made out.

20. We have given our careful consideration to the Order passed by the Commissioner Inland Revenue Appeals whereby the appeal of the taxpayer was remanded back to the assessing officer. In legal parlance, the decision of the Commissioner Inland Revenue Appeals should be inconsonance with the provisions of Law and decision arrived and conclusion drawn must not vitiate the express provision of Law but in the instant matter the Commissioner Inland Revenue Appeals has exercised jurisdiction not vested in him and travelled beyond the mandate of law.

21. We have examined the veracity of the remand order and it is now established law that remand should not be directed in a light vein. In ultimate analysis a remand neither favours the revenue nor the assessee. In revenue matters, without an exception after remand the fate of an assessee never changes for the better. In most of the cases the remand order is rather employed by the assessing officer to make the fate of assessee even worse. All previous discrepancies are meticulously taken care of so that the assessee finds no favourable factual or legal proposition to urge before the appellate forum.

22. We may point that besides above legal infirmity, the counsel for appellant has assailed the alleged addition on account of concealed purchases under section 111 of the Ordinance,

2001 as having been made without giving any specific and separate notice which is sine qua non and no addition under section 111 can be made without independent, specific and separate notice with specification of relevant clauses and subsection of section 111 of the Ordinance, 2001. We have seen that in absence of a specific notice, the additions made under section 111 of the Ordinance, 2001 have already been deleted by learned Appellate Tribunal Inland Revenue, Karachi in a case reported as [2015 PTD (Trib.) 1242]. In the referred case, the Inland Revenue Officer has not given any independent separate notice as requisitioned under law therefore; addition under section 111 of the Ordinance, 2001 was declared unfair, unjust and unlawful; and was accordingly annulled. The counsel has emphasized that this Tribunal has already vacated such additions and relies on earlier judgments reported as [2012 PTD (Trib.) 312], [2013 PTD (Trib.) 790] and [2015 PTD (Trib.) 1242].

23. This clinching question for determination of instant appeal is whether without issuing a separate notice under section 111 of the Ordinance, the amended assessment can legally sustain? Riposte to this issue has been embedded in a case decided by the honouable Lahore High Court. Lahore and reported as 2019 PTD 1828 Commissioner Inland Revenue T.R.O. Faisalabad v. Faqir Hussain and another wherein the honourable High Court has held as under.

8. Perusal of the provisions of Section 111 of the Ordinance of 2001 shows that if the instances/categories of unexplained income and assets, mentioned therein come to the knowledge of the commissioner, he is not obliged to form an opinion on the bases of information so gathered rather is required to issue notice to the taxpayer seeking explanation, confronting the information collected that its case comes within the head(s) specified in subsection (1). Though word notice is not specifically mentioned in the said provisions of law but words ...the persons offer no explanation ...and ...or the explanation offered by the person is not, in the Commissioners opinion, satisfactory... Clearly suggest that for an explanation to be offered by the person, he must have been issued a notice. After said notice and failure on the part of taxpayer to offer satisfactory explanation, such addition can be made in the income of the taxpayer. For an explanation to be offered by a registered person, he must have been issued a notice without which no explanation could be offered, within the contemplation of Section 111 of the Ordinance of 2001. Reference can be made to the cases of Messrs Ranipur CNG Station and Muhammad Shafique supra.

10. Non-issuance of separate notice under Section 111 has caused prejudice to respondent-taxpayer as substantial compliance of said provisions of law has not been made. The ordinary meanings of Notice as referred to by learned Legal Advisors, with reference to various dictionaries, are not applicable to the issue in hand. Non issuance of proper notice in order to invoke provisions of Section 111 cannot be taken lightly and its non-compliance may lead to render the proceedings not in conformity with or according to the intent and purpose of law. In the instant case, neither notice under Section 111 of the Ordinance of 2001 has been issued to the taxpayer nor was the taxpayer specifically confronted with such proposed addition so that the taxpayer could have advanced some explanation in this regard. Thus, impugned addition appears to be without any lawful authority.

11. So far as argument of learned Legal Advisors of applicant-department, with reference to the cases of Abdul Ghani Zamindara Paper and Board Mills supra, that mere substance of notice is to be seen and mentioning of Section 111 with its all ingredients along with notice under Section 122(9) read with Section 122(5A) fulfills the conditions, suffice it to say that law mandates the issuance of separate notice / explanation within the contemplation of Section 111, therefore, same cannot be made redundant.

12. In view of the above, our answer to the proposed question is in affirmative i.e. against the applicant-department and in favour of respondent-taxpayers.

The August Supreme Court has affirmed the above point of view subsequently.

24. The appellant has emphatically pursued vacation of the impugned orders on distinct score that the instant matter has not arisen from any audit proceedings and even otherwise; no definite information was available with the Inland Revenue to make out a case of concealment on account of expenditure or purchases. Affirmatively, the provisions of subsection (8) of section 122 of the Ordinance, 2001 contains an inclusive definition of definite information, which provides in its material part that such information includes information....on the acquisition, possession or disposal of any money, assets, valuable article or investment made or expenditure incurred by the taxpayer. At the relevant time, subsection (5) required that the deemed assessment order could only be amended where, on the basis of definite information acquired from an audit or otherwise the Commissioner is satisfied that anyone of three clauses of the subsection is applicable. In the present case, there is of course no audit involved; therefore, the definite information otherwise acquired which a missing factor is the only way to make out a case of escaped assessment of income and tax.

25. Keeping in view the twin grounds as dilated above, we felt compelled to seek guidance from a latest pronouncement of the August Supreme Court of Pakistan on the similar issues in a case titled The Commissioner Inland Revenue, Zone Bahawalpur v. M/s. Bashir Ahmed, Fort Abbass and reported as 2021 SCMR 1290. Based on above enunciation we are obligated to hold that a separate notice is a must to proceed for addition under section 111 of the Ordinance, 2001. Even in the absence of any definite information as required under law, no case of concealment of income or expenditure can be made under subsections (1) and (5) of section 122 of the Ordinance, 2001. Having found resolve of the above two issues in a single judgment rendered by the Supreme Court of Pakistan; no expanded deliberation is required on the subject except to adhere to the pith and substance of the referred judgment and relevant extract is replicated herein below:--

Now, subsection (8) of section 122 contains an inclusive definition of definite information, which provides in material part that such information includes information....on the acquisition, possession or disposal of any money, assets, valuable article or investment made or expenditure incurred by the taxpayer. At the relevant time, subsection (5) required that the deemed assessment order could only be amended where, on the basis of definite information acquired from an audit or otherwise the Commissioner was satisfied that anyone of three clauses of the subsection was applicable. In the present case, there was of course no audit involved, and therefore, the definite information could only have been otherwise acquired. Now, one manner in which the information can be so acquired is by proceedings under section 111. This provides, at the relevant time and as presently material, in subsection (1) that if any of its clauses was found to apply, and the person concerned.

Offers no explanation about the nature and source of the amount or the investment, money, valuable article, or funds from which the expenditure was made.... or the explanation offered by the person is not, in the Commissioners opinion, satisfactory--

(a) The amount credited value of the investment, money, value of the article or amount of expenditure ... shall be included in the persons income chargeable to tax under head income from other sources to the extent it is not adequately explained...

As noted above, a notice under section 111 was issued to the respondent. However, the sequence of the notices was crucial. The notice under section 122 subsections (1), (5) and (9) was issued first, on 24.09.2011 and it was only later, on 07.12.2011, that the notice under section 111 was issued. Now, and this is crucial and determinative for present purposes, the first notice purported to state that the department is in possession of definite information regarding the investment allegedly made in immoveable property.

That claim was repeated in the notice under section 111. In other words, the respondent was not given an opportunity, as is mandatorily required by S. 111, to satisfy the tax authorities as to the source etc. of the funds by which the immoveable property was acquired. Rather, the department from inception, and throughout, proceeded on the basis that it already had definite information with it in this regard, such as was sufficient to allow the amendment of the deemed assessment order. However, that could not be so until first the proceedings under section 111 had culminated in an appropriate order. That order could have constituted the definite information as would allow the amendment of the deemed assessment order, and indeed, subsection (2) of section 111 contains elaborate statutory instructions as to which is the tax year in which the concealed income is to be added.

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. Here, the proceedings under section 111 were, as it 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. That, in law, could not be so. Therefore, in our view, there was no definite information available within the contemplation of the statute. The conclusions arrived at by the learned Tribunal and learned High Court, were correct and did not warrant interference by this Court.

26. To advert to an objection qua the impugned addition made under section 111(1) (c) of the Ordinance, 2001 being against the facts and law, we have examined the order passed under section 122(1) read with section 122(5) of the Ordinance. 2001 which makes addition for creating tax liability in terms of section 111(1) (c) of the Ordinance, 2001, by treating stock-in-trade as expenditure and is not only illegal and unlawful but also against norms of accounting standards internationally acceptable at large. Conspicuously, expenditure is what is paid out or away and is something which is gone irretrievably as defined and held in judgment reported as PLD 1982 Kar. 684. Based on this, if any difference of stocks declared for the purpose of income tax and sales tax is found or effectively unearthed through audit or otherwise it cannot be added under section 111(1)(c) of the Ordinance, 2001. The stocks held at certain point of time ought to be added in investment, money, assets or valuable articles owned by a person whose sources are not adequately explained by him but it could not definitely be added towards his expenditures. Genuinely, if any misappropriation of stocks is found by comparing the declarations made under the Ordinance, 2001 with that of information available in sales tax record then its addition can be made under section 111(1) (b) of the Ordinance, 2001 and the provisions of section 111(1)(c) ibid are least relevant on the subject. The stocks are physically tangible in trade or business whereas expenditures are irretrievably gone into cost of goods sold. It is now easy to hold that the situation of misappropriation of stocks if actually existed on record or physically detected at business premises of a taxpayer/appellant even then its addition cannot be made under section 111(1)(c) of the Ordinance, 2001 have nothing to do with such like eventuality.

27. We have very assiduously sifted this case on its own factual merits as well and it is significantly discernible that the data as given in annexure F of sales tax return is basically

a summary of input tax which cannot be made basis for Calculating stocks held on a particular date may be the closing date of 30th June of any tax year to make its comparison with that of stock-in-trade as declared in income tax return. The statistics as given in annexure F of sales tax return cannot be termed as stock-in-trade of a person who is registered for both sales tax and income tax purposes. The summary of input tax as shown in annexure F of sales tax return have certain legal flaws and factual lacunas which always exist to hamper the Inland Revenue Officers to treat its statistical data as stock-in-trade of a registered taxpayer.

28. In the subsistence of all such factual and legal statistical infirmities as pointed and noted above; no comparison of stocks worked out on the basis of input tax summary as contained in annexure F of sales tax returns can be made with that of stock-in-trade shown in income tax return for a tax year. It is manifest that all of factors as given at Paras 12(i) to 12(xiv) of this order are correctly appraised by the counsel of appellant in the instant case and we have nothing in our mind to draw any adverse inference/outcome on each of the grounds pleaded and argued at the bar except to say that all of those are not applicable in one go or in one case instead each of these grounds covers a distinct and different tax eventualities.

29. The learned counsel of appellant has laid emphasis inter alia on the accumulative factors of stocks as opening stocks for the tax years 2018, 2019 and 2020 as appeared on 30th June of the respective year in annexure F of sales tax returns are incorrect and unfounded, causing due to factual and legal infirmities as pointed out earlier at paragraphs 12(i) and 12(xiv) above mainly due to imports made on payment of fixed tax at the rate of Rs.5,600/- per metric ton of re-meltable iron and steel scrap as appeared in annexure K whose effect has never been given in annexure F of sales tax return. Since, the figures of opening stocks for the year in question as carried forwarded from the previous years are false and incorrect, and its consumption is also not given in annexure F of sales tax return due to missing effect of imports in its annexure K therefore; any results derived by taking wrong balances of stocks are also incorrect and false as its foundation is built on wrong pedestal.

30. The counsel for appellant has drawn our attention and asserted this Bench to considering his averments as given in para-12 (iv) above where input tax credit not adjusted in sales tax return for a tax period due to prohibition of 90 percent adjustment of input tax needs to be carried forward under the provisions of 8B of the Sales Tax Act fails to find any place in annexure F of sales tax return. This input tax credit not adjusted in the relevant month becomes a part of input tax for the next month but it is not automatically reflected in its annexure F. This phenomenon of adjustable input tax as per provisions of section 8B of the Sales Tax Act, 1990 is not covered through the computer system to report its fictional occurrence in annexure F of sales tax return.

31. Nevertheless, by way of statutory mischief as given in the proviso to subsection (1) of section 7, for determination of tax liability under section 7 of the Sales Tax Act, 1990, where a registered person did not deduct input tax within the relevant period, the registered person may claim adjustment of such tax credit in the return for any of the six succeeding tax periods. This spread over for adjustment of input tax for a protracted period of six months for reporting purchases under the sales tax laws never commensurate with the provisions of the Ordinance, 2001 where all the purchases made during a tax year have to be reported at the verge of its ending on 30th June at the same time when its inventory is ventured into the business of a taxpayer. The opinion formed by us during the course of hearing of the case is in conformity with the averments made by the appellant that the information and data of input tax as given in annexure F does include sales tax paid on

packing materials appearing in separate head of account in income tax. Similarly plant and machinery, stores and spares, and certain other goods are included therein whose cost is to be capitalized by the taxpayer in his annual accounts as per accounting standards and these goods can never form a part of raw materials or stock-in-trade. Additionally, input tax incurred on electricity, gas and other sales taxable utilities are included in the summary of input tax given therein but it cannot be stored or stocked to notionally form them out stock-in-trade of a taxpayer. The statistical data of input tax summary is restricted to include raw materials in respect of which input tax is incurred on its purchases or imports and to somehow capital goods like plant and machinery, stores and spares, etc but it never includes work-in-progress, semi-finished goods and finished goods otherwise included in stock-in-trade as defined in section 95 of the Ordinance, 2001.

32. The term, stock-in-trade means anything produced, maufactured, purchased, or otherwise acquired for manufacture, sales or exchange, and any material or supplies to be consumed in the production or manufacturing process, but does not included stocks and shares. It is very much conspicuous from this definition that the stock-in-trade as declared in income tax return does include stocks of goods manufactured and produced, goods remained in work-in-process or the semi manufactured goods not yet converted into finished goods at the end of a financial year are also included therein.

33. Contrarily, statistical data of input tax as given in summary manner in annexure F of sales tax return merely includes raw materials in respect of which input tax is paid on its purchase or imports and it has nothing to do with the goods manufactured or produced whether in finished or semi-finished form as kept in stocks in the ongoing production process. All other factors composing the distinct tax situations as averred by the appellant in the above paragraphs cannot be discussed at length particularly when our opinion is not controvertible to its substance hence; needs no more deliberation. We felt convinced with the above averments of appellant that all these factors cannot be taken into account simultaneously to bring out a case of misappropriation of stocks as ineffectively done in the instant case more particularly when it is not humanly possible to make out a multidimensional model considering all the variables instantaneously.

34. The upshot of the above is that annexure F is only meant for summary of input tax and excess carry forward amount of sales tax credit. None of the provisions of the Sales Act, 1990 or of the Ordinance, 2001 has purported to deem these figures of carry forward summary to be the closing stocks as it is miserably failed to serve as a stock statement of a taxpayer/appellant. It cannot be equated with stock statement of a taxpayer on the whims and wishes of the Revenue for creating concurrent tax liabilities under two separate statutes having different standards of reporting stocks and inventory. As a sequel of the above, we require no further deliberation on any residual factual and the legal infirmities as noted and pointed out supra are adequate to conclude and hold that the impugned annexure F of sales tax return in its current format can never serve the purposes of a stock statement of taxpayer to create tax liabilities. Consequently, the act of the Revenue treating annexure F data as closing stocks of the taxpayer is utterly illegal, unlawful and unfounded as well. The appeal of the taxpayer is allowed and the orders passed by the authorities below are hereby vacated. We order accordingly.

35. This order consists of twenty-five pages and each page bears my signatures.