

**21st KTBA CASE LAW UPDATE
(October 09, 2023)**

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Dear Members,

A brief update on a recent judgment by the Supreme Court of Pakistan on “**FBR ordered to gazette and to post all the Notifications and Orders on Website**”, 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**” 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

(Zafar Ahmed)

President

October 09, 2023

(M. Mehmood Bikiya)

Hon. General Secretary

October 09, 2023

**21st KTBA CASE LAW UPDATE
(October 09, 2023)**

FBR ORDERED TO GAZETTE AND TO POST ALL THE NOTIFICATIONS AND ORDERS ON WEBSITE.

DELEGATION OF POWER WITHOUT MENTION OF RELEVANT SECTION IS ILLEGAL.

Appellate Authority: Supreme Court of Pakistan

Appellant: Commissioner IR, RTO, Peshawar

Sections: 122 & 210 of the Income Tax Ordinance, 2001 [the Ordinance].

Detailed judgment was issued on Sep. 27, 2023 [Civil Review Petition No. 426/2022].

Background: The Supreme Court dismissed the review petition filed by the Commissioner on the ground that the Deputy Commissioner was not delegated by the Commissioner with powers to amend the assessment under section 122 of the Ordinance. It was observed by the Court that the order produced before it did not mention the section 122 of the Ordinance.

Decision of the Court:

First Ruling of the Court:

The order produced before the court lacked the legal authority to delegate the Commissioner's statutory powers to Deputy Commissioners. Hence, it was held that the amended assessment order cannot be upheld. Moreover, the delegation order didn't provide explicit authorization for such actions.

Second Ruling of the Court:

It was held that Taxpayers should know who is exercising authority and whether such exercise of authority is permissible. Delegation Orders of power are neither gazette nor made available on website of the FBR. Non-disclosure of such orders was stated to be beyond comprehension and was apprehended that the reason for concealment could not be to use it in appropriate cases and suppress it in others. The court showed displeasure on the lack of transparency.

Third Ruling of the Court:

During the main appeal hearing, the Commissioner, did not didn't mention the order. The Court emphasized that all notifications/orders to be gazette and displayed on the FBR website to assist FBR officers, tax practitioners and the taxpayers.

Comments:

The delegation of authority is fundamental within the framework of the Ordinance. The Commissioner Inland Revenue holds a central position, and all subordinate officers operate under his delegated authority.

The Commissioner is, therefore, responsible for assigning responsibilities to officers under his supervision through the periodic issuance of jurisdiction orders. These jurisdiction orders dictate the scope of authority for each subordinate officer.

Every action taken by a subordinate officer is contingent upon the delegation of authority by the Commissioner.

This judgment addresses the essential requirement of assumption of jurisdiction by officers below the Commissioner rank and mandates that such delegation orders be made publicly available, particularly to taxpayers whose cases falls within the assessment jurisdiction of field officers delegated by the Commissioner.

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 or project would not be binding on KTBA.

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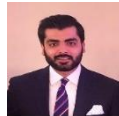
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Best regards

(Zafar Ahmed)
President

(M. Mehmood Bikiya)
Hon. General Secretary

(Shams M. Ansari)
Convener: Case Law Update Committee

IN THE SUPREME COURT OF PAKISTAN

(Review Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa, CJ
Mr. Justice Amin-ud-Din Khan
Mr. Justice Athar Minallah

Civil Review Petition No. 426 of 2022

*[For review of the order dated 03.10.2022
passed by this Court]*

In

Civil Appeal No. 51 of 2020

*Commissioner Inland Revenue, Zone-I,
RTO, Peshawar and another.* ... *Petitioners*

Versus

Ajmal Ali Shiraz M/s Shiraz Restaurant, Peshawar. ... *Respondent*

For the Petitioners: Ms. Neelam Azra Khan, ASC.
a/w Mr. Sohail Ahmed,
Additional Commissioner (Legal), FBR.
(Through video-link from Peshawar)

For the Respondent: Not represented.

Date of Hearing: 27.09.2023.

ORDER

Qazi Faez Isa, CJ. This civil review petition assails order dated 3 October 2022 of this Court. The matter pertains to the amendment of assessment which power, under section 122 of the Income Tax Ordinance, 2001 (**‘the Ordinance’**) is bestowed upon the *Commissioner*. When Civil Appeal No. 51 of 2020, order wherein is assailed herein, was heard it was contended that the order amending the assessment was passed by the Deputy Commissioner, Inland Revenue, who was not authorized to amend the assessment. At that time we were also assisted by Mr. Sohail Ahmed, Additional Commissioner, Regional Tax Office, Peshawar and neither he nor the learned ASC could produce any delegation of authority by the Commissioner of his said powers to the Deputy Commissioner despite grant of a further opportunity to do so (as noted in paragraph 3 of the order under review).

2. The order of this Court is now sought to be reviewed on the ground that the Deputy Commissioner was delegated powers to amend the assessment *vide* order No. 616, dated 5 December 2009, issued by the Commissioner Inland Revenue (Audit-I), Regional Tax Office, Peshawar (**the said order**) mentioned at serial No. 1 of the Table contained in the said order.

3. However, the said order does not refer to section 122 of the Ordinance with regard to amendment of assessment nor is it so stated under column No. 4 of the Table pertaining to *Jurisdiction*.

4. We enquired from the learned counsel whether the said order has been gazetted and were informed that it was not. We then enquired whether that said order is available on the website of the Federal Board of Revenue (**FBR**) and were told that it was not. It is beyond comprehension why this has not been disclosed. Surely the reason for concealment could not be to use it in appropriate cases and suppress it in others. Nonetheless opaqueness perturbs us. Taxpayers should know who is exercising authority and whether such exercise of authority is permissible.

5. This civil review petition is a classic example of a case not properly presented. The point raised today had already been argued at the time of hearing the appeal and indulgence had also been shown to the petitioner (Commissioner Inland Revenue) to disclose the requisite authority bestowed on the Deputy Commissioner. The very same officer, who is present today, namely, Mr. Sohail Ahmed, Additional Commissioner, FBR was in attendance then too, but he did not refer to the said order. Surprisingly, a senior officer was not aware of the said order which necessitates that all notifications/orders should be gazetted and also displayed on the website of the FBR to facilitate the officers of the FBR, tax practitioners and taxpayers.

6. The said order does not delegate the statutory power of the Commissioner to Deputy Commissioners, therefore, the purported amendment made to the assessment order was not sustainable. The said order also does not grant such specific authorization. Consequently, this

review petition is dismissed with costs of ten thousand rupees; to be paid to a charity of the choice of the petitioner.

7. Copy of the order passed today be sent to the Chairman, FBR for onward circulation to all Commissioners of the Inland Revenue. We also expect that the FBR/Inland Revenue will gazette all notifications, orders etc. which may affect taxpayers and also to display them on the website of the FBR.

Chief Justice

Judge

Judge

Islamabad
27.09.2023
(M. Tauseef)

Approved for Reporting