

APPELLATE TRIBUNAL INLAND REVENUE, DIVISION
BENCH- I, ISLAMABAD

STA No.13/IB/2026
MA(AG) STA No.18/IB/2026
(Tax Period, July 2020 to June 2023)

M/s Attock Refinery Limited;
Attock House, Morgah,
Rawalpindi.
STRN:0701271300228

Appellant

Vs

Commissioner Inland Revenue,
Zone-III, LTO, Islamabad.

Respondent

Appellant By:
Respondent By:

Sheikh Moeen Ahmed, FCA
Mr. Liaqat Ali, LA, assisted by
Mr. Imran Shah, FCMA/DR

Date of Hearing:
Date of Order:

13.04.2026
16.04.2026

ORDER



M. M. AKRAM (JUDICIAL MEMBER): The instant appeal, along with a miscellaneous application seeking leave to raise additional grounds, has been filed by the appellant/registered person against Order-in-Appeal No. 35/2025 dated December 30, 2025, passed by the learned Commissioner Inland Revenue (Appeals-I), Large Taxpayers Office, Islamabad, pertaining to the relevant tax periods, on the grounds set forth in the respective memoranda of appeal. The appellant also sought to raise additional grounds at the time of the hearing, which, being purely legal in nature, were admitted for adjudication and are being addressed hereunder.

2. Briefly stated, the facts giving rise to the present appeal are that, in the first round of litigation, the learned Commissioner Inland Revenue (Appeals-I), Islamabad, vide Sales Tax Order-in-Appeal No. 62/2024 dated April 30, 2024, remanded the matter arising out of

Order-in-Original No. 03/2022 dated February 29, 2024, passed by the Deputy Commissioner Inland Revenue (DCIR), with directions to obtain and examine complete purchase invoices along with a detailed break-up/summary so as to determine the admissibility of the input tax claim strictly in accordance with section 8 of the Sales Tax Act, 1990 ("the Act"). In compliance with the said directions, the Assistant Commissioner Inland Revenue (ACIR) initiated remand proceedings and afforded the appellant an opportunity of being heard. Upon conclusion of the second round of proceedings, the ACIR passed Order-in-Remand No. 17/2025 dated June 30, 2025, whereby a sales tax liability amounting to Rs. 53,710,710 was determined and held recoverable from the appellant, along with default surcharge under section 34 (to be computed at the time of payment) and penalty under section 33(5) of the Sales Tax Act, 1990.



3 Aggrieved by the said order, the appellant/registered person preferred an appeal before the learned Commissioner Inland Revenue (Appeals-I), LTO, Islamabad. However, the learned appellate authority, vide the impugned Order-in-Appeal No. 35/2025 dated December 30, 2025, upheld the findings and treatment accorded by the ACIR. Being dissatisfied with the conclusions of the first appellate authority, the appellant has now instituted the present appeal before this Tribunal, assailing the impugned order on various grounds.

Submission of the Appellant

4. The matter was fixed for hearing on April 13, 2026. The learned counsel for the appellant has forcefully contended that, after the substitution of section 11B of the Sales Tax Act, 1990, through the Finance Act, 2024, the legislature has consciously and deliberately

aligned the statutory framework with that envisaged under section 124 of the Income Tax Ordinance, 2001. It is argued that under the said provision of the Income Tax law, the authority to pass appeal effect orders is specifically and exclusively vested in the Commissioner Inland Revenue or the Commissioner (Appeals), thereby reflecting a clear legislative intent to confine such powers to designated officers at a particular hierarchical level.

4.1 The learned counsel emphasized that the omission of any reference to subordinate officers in the newly substituted section 11B is neither accidental nor inadvertent; rather, it is a deliberate legislative act signifying an intention to restrict the exercise of such powers only to the authorities expressly mentioned therein. According to him, this conscious exclusion must be given its due meaning and cannot be rendered redundant through interpretative expansion.



4.2 Elaborating further, it was submitted that the expression "mutatis mutandis" employed in the provision cannot be construed in an expansive manner so as to import the provisions of section 210 of the Income Tax Ordinance, 2001 into the Sales Tax regime. The learned counsel argued that section 210, which deals with the delegation of powers, embodies a substantive legal principle rather than a mere procedural mechanism. Therefore, in the absence of an analogous or enabling provision within the Sales Tax Act, 1990, the concept of delegation cannot be read into the statute by implication. Any such attempt, it was contended, would amount to judicial legislation, which is impermissible in law.

4.3 The learned counsel further argued that jurisdictional competence is a foundational and indispensable requirement for the

validity of any legal or quasi-judicial action. An order passed by an officer lacking lawful authority is void ab initio, non est in the eyes of law, and incapable of creating any legal consequences. In support of this proposition, reliance was placed upon the reported judgment cited as 2007 PLJ 170, as well as an unreported decision of the Islamabad High Court in Writ Petition No. 1710 of 2010 titled **Pak Telecom Mobile Ltd. v. Additional Commissioner Inland Revenue (Audit), LTO, Islamabad**, decided on February 25, 2011.

4.4 It was also argued that under the pre-amendment legal regime, the statute expressly permitted officers of Inland Revenue to pass such orders, thereby clearly recognizing delegated authority. However, the deliberate omission of such enabling language in the substituted provision marks a significant departure from the earlier legislative scheme, reinforcing the argument that the power is now intended to be exercised only by the specified authorities.

4.5 On merits, the learned counsel also addressed the case at considerable length, presenting a comprehensive summary of the issues involved, duly supported by relevant case law, all of which, according to him, substantiate and fortify the appellant's position.

Arguments of the Revenue Department

5. On the other hand, the learned Legal Advisor has vigorously opposed the contentions advanced on behalf of the appellant and submitted that section 11B of the Sales Tax Act, 1990 expressly provides for the application of section 124 of the Income Tax Ordinance, 2001 *mutatis mutandis*, which, by necessary implication, encompasses not only the principal provision but also all ancillary, incidental, and supplementary provisions required for its effective enforcement and



implementation. It was contended that such incorporation cannot be read in a narrow or restrictive sense; rather, it must be given a purposive interpretation so as to make the provision workable in its entirety.

5.1 Elaborating further, the learned Departmental Representative argued that the principle of *mutatis mutandis* inherently carries with it the adoption of the complete statutory scheme, including the mechanism of delegation as envisaged under section 210 of the Income Tax Ordinance, 2001. According to him, the power of delegation is not an independent or isolated provision but forms an integral part of the administrative framework governing tax authorities, and its application is indispensable for the proper discharge of statutory functions.



5.2 It was further submitted that the Commissioner Inland Revenue, being the administrative head of the department, cannot, as a matter of practical necessity, personally discharge all statutory and quasi-judicial functions assigned under the law. The efficient functioning of the tax machinery requires a structured system wherein powers are delegated to subordinate officers, enabling the timely and effective implementation of the law. In this context, the learned Departmental Representative maintained that the authority to delegate powers is both inherent and essential, and its recognition is deeply embedded in administrative jurisprudence.

5.3 The learned Departmental Representative also contended that the doctrine of delegation is a well-established and universally accepted principle of administrative law, which has been explicitly recognized under the Income Tax Ordinance, 2001. Since section 11B of the Sales Tax Act, 1990 incorporates the relevant provisions of the Income Tax

law, the principle of delegation, including the statutory backing provided under section 210, stands imported into the Sales Tax regime as well. Consequently, any orders passed by subordinate officers in exercise of duly delegated authority are legally valid, competent, and enforceable in the eyes of law.

5.4 In support of these submissions, reliance was placed upon the reported judgments cited as PTCL 2021 CL 1 and PTCL 2025 CL 835, which, according to the learned Departmental Representative, affirm and reinforce the legality of actions taken by subordinate officers under valid delegation of powers.

FINDINGS:



We have accorded our anxious and thoughtful consideration to the submissions advanced by the learned representatives of both sides. In doing so, we have also undertaken a meticulous, careful, and comprehensive examination of the entire material placed on record, including the relevant statutory provisions, documentary evidence, and the factual matrix of the case. Upon such consideration, it emerges that the controversy involved in the present appeal, though appearing to be confined within a narrow compass, nonetheless raises issues of considerable legal significance. The dispute essentially centers around the interpretation, scope, and application of the substituted provisions of section 11B of the Sales Tax Act, 1990, as introduced through the Finance Act, 2024.

In this backdrop, the following legal issues arise for our determination and adjudication in the present proceedings:

- i. **Whether, under section 11B of the Sales Tax Act, 1990 (as substituted by the Finance Act, 2024), an officer below**

the rank of Commissioner Inland Revenue is legally competent to pass an order giving effect to the directions of appellate authorities?

- ii. Whether the provisions of section 210 of the Income Tax Ordinance, 2001, relating to the delegation of powers can be invoked, by virtue of *mutatis mutandis* application of section 124, for the purposes of section 11B of the Sales Tax Act, 1990?
- iii. Whether the substitution of section 11B through the Finance Act, 2024, has restricted the authority to pass appeal effect orders exclusively to the Commissioner (or Commissioner Appeals, where applicable), thereby excluding subordinate officers?
- iv. Whether the expression "*mutatis mutandis*" in section 11B extends only to procedural aspects, such as limitation, or also incorporates substantive provisions like delegation of powers under section 210?
- v. Whether, in the absence of an explicit delegation provision in the Sales Tax Act, 1990, can administrative practice validate orders passed by subordinate officers?
- vi. Whether an order passed by an officer not duly authorized under the amended legal framework is void *ab initio* or merely an irregularity curable under law?



RELEVANT LAW

7.1 Pre-Amendment Position (Before Finance Act, 2024) Section 11B

11B. Assessment giving effect to an order.— (1) Except where sub-section (2) applies, where, in consequence of, or to give effect to, any finding or direction in any order made under Chapter-VIII by the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court an order of assessment of tax is to be issued to any registered person, the Commissioner or an officer of Inland Revenue empowered in this behalf shall issue the order within one year from the end of the financial year in which the order of the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court, as the case may be, was served on the Commissioner or officer of Inland Revenue.

(2) Where, by an order made under Chapter-VIII by the Appellate Tribunal, High Court or Supreme Court, an order of assessment is remanded wholly or partly and the Commissioner or Commissioner (Appeals) or officer of Inland Revenue, as the case may be, is directed to pass a new order of assessment, the Commissioner or Commissioner (Appeals) or officer of Inland Revenue,

as the case may be, shall pass the new order within one year from the end of the financial year in which the Commissioner or Commissioner (Appeals) or officer of Inland Revenue, as the case may be, is served with the order: Provided that limitation under this sub-section shall not apply, if an appeal or reference has been preferred against the order passed by Appellate Tribunal or a High Court." (Emphasis supplied)

A plain reading of the above provision reflects that the authority to pass an assessment order, whether in consequence of or for giving effect to any finding or direction contained in an order made under Chapter VIII by the Commissioner (Appeals), the Appellate Tribunal, the High Court, or the Supreme Court, is vested in the **Commissioner**, the **Commissioner (Appeals)**, or an **officer of Inland Revenue**, including functionaries such as the ACIR and DCIR, as the case may be.

7.2 **Post-Amendment Position (After Finance Act, 2024)**

"11B. Limitation for issuing orders in certain cases.— For the purposes of issuing an assessment order or any other order in consequence of or to give effect to any order made by the Commissioner (Appeals), Appellate Tribunal, High Court, or Supreme Court, the provisions of **section 124 of the Income Tax Ordinance, 2001** (XLIX of 2001) shall apply **mutatis mutandis**;" (Emphasis supplied)



Following the substitution of section 11B through the Finance Act, 2024, the legal position has undergone a material change. The newly enacted provision now stipulates that, for the purposes of issuing an assessment order or any other order in consequence of, or to give effect to, any order passed by the Commissioner (Appeals), the Appellate Tribunal, the High Court, or the Supreme Court, the provisions of section 124 of the Income Tax Ordinance, 2001 (XLIX of 2001) shall apply *mutatis mutandis*.

7.3 Accordingly, the determination of limitation and the procedural framework governing such orders is no longer independently provided within section 11B itself, but is now to be derived from, and regulated by, section 124 of the Income Tax Ordinance, 2001, as presently in force, which reads as under:

"124. Assessment giving effect to an order. — (1) Except where sub-section (2) applies, where, in consequence of, or to give effect to, any finding or direction in any order made under Part III of this Chapter by the Commissioner (Appeals), 3 [if the value of the assessment or, as the case may be, refund of the tax does not exceed twenty million rupees,] Appellate Tribunal, High Court, or Supreme Court an assessment order or amended assessment order is to be issued to any person, the Commissioner shall issue the order within two years from the end of the financial year in which the order of the Commissioner (Appeals), if the value of the assessment or, as the case may be, refund of the tax does not exceed twenty million rupees, Appellate Tribunal, High Court or Supreme Court, as the case may be, was served on the Commissioner.

(2) Where, by an order made under Part III of this Chapter by the Appellate Tribunal, High Court, or Supreme Court, an assessment order is set aside wholly or partly, and the Commissioner or Commissioner (Appeals), as the case may be, if the value of the assessment or, as the case may be, refund of the tax does not exceed twenty million rupees, is directed to pass a new assessment order, the Commissioner or Commissioner (Appeals), as the case may be, if the value of the assessment or, as the case may be, refund of the tax does not exceed twenty million rupees, shall pass the new order within one year from the end of the financial year in which the Commissioner or Commissioner (Appeals), as the case may be, if the value of the assessment or, as the case may be, refund of the tax does not exceed twenty million rupees, is served with the order:

Provided that limitation under this sub-section shall not apply, if an appeal or reference has been preferred, against the order, passed by Appellate Tribunal or a High Court.

(3) Where an assessment order has been set aside or modified, the proceedings may commence from the stage next preceding the stage at which such setting aside or modification took place and nothing contained in this Ordinance shall render necessary the re-issue of any notice which had already been issued or the re-furnishing or re-filing of any return, statement, or other particulars which had already been furnished or filed.

(4) Where direct relief is provided in an order under section 129 or 132, the Commissioner shall issue appeal effect orders within two months of the date the Commissioner is served with the order.

....." (Emphasis supplied)

7.4 A careful and plain reading of the above reproduced provisions of section 124 of the Income Tax Ordinance, 2001 reveals that the statutory mandate for passing an assessment order, or an amended assessment order, in consequence of or to give effect to any finding or direction contained in appellate or higher judicial fora orders, is specifically and expressly vested in the Commissioner or, in certain circumstances, the Commissioner (Appeals), as the case may be. The language of the provision is both clear and restrictive, inasmuch as it



does not, on its face, extend such authority to any other officer of the Inland Revenue hierarchy.

7.5 It is a well-settled principle of statutory interpretation that where the legislature intends to confer a broader or more expansive application of a provision, it employs clear, enabling, and inclusive language to that effect. In the present context, had it been the intention of the legislature to enlarge the scope of section 124 so as to encompass officers subordinate to the Commissioner, or to incorporate ancillary and incidental powers including delegation, the legislature would have adopted phraseology akin to that employed in sub-sections (2A) and (3) of section 3 of the Islamabad Capital Territory (Tax on Services) Ordinance, 2001. The said provisions explicitly extend the application of the Sales Tax Act, 1990, through the use of comprehensive expressions such as "shall apply, mutatis mutandis" and further broaden the scope by including "all other allied and ancillary matters," thereby manifesting a clear legislative intent to import not only specific provisions but also the entire procedural and administrative framework necessary for effective implementation.



7.6 In stark contrast, section 124 of the Income Tax Ordinance, 2001 is conspicuously devoid of any such expansive or incorporative language. It neither adopts any other statutory provisions wholesale nor employs general words indicative of an intention to include subordinate functionaries or delegated authority within its ambit. The deliberate omission of such language is legally significant and reinforces the conclusion that the power to pass orders giving effect to appellate findings is intended to remain confined to the specifically designated authorities, namely the Commissioner or Commissioner (Appeals). Any

attempt to read into the provision an implied authority in favour of subordinate officers would, therefore, amount to judicial legislation, which is impermissible under settled canons governing the interpretation of fiscal statutes, where strict construction must prevail and nothing can be added or implied beyond what has been expressly provided by the legislature.

7.7 It is further evident that the legislature, while enacting section 124, has consciously identified and confined the exercise of such powers to these designated authorities, particularly in matters involving appellate effect or consequential assessments. This reflects a deliberate legislative intent to centralize the authority for giving effect to appellate orders at a higher administrative level, thereby ensuring consistency, accountability, and adherence to judicial directions.

7.8 However, it is equally important to note that under the scheme of the Income Tax Ordinance, 2001, a specific enabling provision exists in the form of section 210, which authorizes the Commissioner to delegate his powers and functions to subordinate officers of Inland Revenue, subject to such conditions, limitations, or restrictions as may be prescribed. By virtue of this provision, the otherwise exclusive powers of the Commissioner may, in appropriate cases, be lawfully exercised by subordinate officers acting under valid delegation.

7.9 In contrast, no analogous or *pari materia* provision exists under the Sales Tax Act, 1990, which would empower the Commissioner to delegate such authority to subordinate officers for the purposes of passing orders in consequence of appellate directions. This distinction assumes significance, particularly in light of the substitution of section 11B of the Sales Tax Act, 1990, through the Finance Act, 2024, whereby



the provisions of section 124 of the Income Tax Ordinance, 2001, have been made applicable *mutatis mutandis*.

7.10 Accordingly, in the absence of an express statutory mechanism for delegation within the Sales Tax Act, 1990, and given the restrictive wording of section 124, a strong inference arises that the authority to pass such consequential or appeal effect orders remains confined to the Commissioner or the Commissioner (Appeals), as the case may be, and cannot be assumed or exercised by subordinate officers in the absence of clear legal sanction. Section 210 of the Ordinance reads as follows:

"210. Delegation. —(1) The Commissioner, subject to sub-section (1A), may, by an order in writing, delegate to any Officer of Inland Revenue, subordinate to the Commissioner all or any of the powers or functions conferred upon or assigned to the Commissioner under this Ordinance, other than the power of delegation.

(1A) The Commissioner shall not delegate the powers of amendment of assessment contained in sub-section (5A) of section 122 and amendment of an order of recovery under sub-section (3) of section 161 to an officer of Inland Revenue below the rank of Additional Commissioner Inland Revenue.

(1B) The Commissioner may, by an order in writing, delegate to a special audit panel appointed under sub-section (11) of section 177, or to a firm of chartered accountants or a firm of cost and management accountants appointed by the Board or the Commissioner to conduct an audit of person under section 177, all or any of the powers or functions to conduct an audit under this Ordinance.

(2) An order under sub-section (1) may be in respect of all or any of the persons, classes of persons or areas falling in the jurisdiction of the Commissioner.

(3) The Commissioner shall have the power to cancel, modify, alter or amend an order under sub-section (1).

....." (Emphasis supplied)

7.11 On a plain and contextual reading of section 210 of the Income Tax Ordinance, 2001, the scope of delegation is expressly confined to ***"the powers or functions conferred upon or assigned to the Commissioner under this Ordinance."*** The phrase ***"this Ordinance"*** is of decisive importance and operates as a clear statutory limitation on the extent of the delegation of power. In our considered view, the



Commissioner cannot, by invoking section 210, delegate powers in relation to the Sales Tax Act, 1990, for the following reasons:

i. Section 210 is a self-contained provision governing delegation strictly within the framework of the Income Tax Ordinance, 2001. The legislature has consciously used restrictive language, thereby confining delegation only to powers arising under that specific statute. Extending this authority to another enactment, i.e., the Sales Tax Act, 1990, would amount to travelling beyond the express words of the provision.

ii. It is a settled canon that fiscal laws must be interpreted strictly. Where the legislature has clearly circumscribed the field of operation of a provision, no addition or implication can be made.

Therefore, in the absence of explicit language permitting cross-statute delegation, such power cannot be inferred. In this regard, the Supreme Court in **Star Textile Mills Ltd. v. Government of Sindh** (2002 SCMR 3561) reaffirmed the principle that tax statutes must be interpreted strictly, with no scope for implication. It emphasized that "tax and equity are strangers," highlighting the inapplicability of equitable considerations in tax interpretation. Moreover, in **Province of the Punjab v. Muhammad Aslam** (2004 SCMR 1649), while interpreting provisions of the West Pakistan Urban Immovable Property Tax Act, 1958, a fiscal statute, the Supreme Court reiterated that such statutes are to be construed strictly; that there is no scope for presumption or intendment; and that the courts must rely solely on the explicit language used by the legislature. Most recently, in **Allied Bank Limited v.**



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Commissioner of Income Tax (2023 SCMR 1166), the Supreme Court reinforced this approach by holding:

"It is well settled that the literal approach is to be adopted while interpreting fiscal or taxing statutes, and the court cannot read into or impute something when the provisions of a taxing statute are clear. While interpreting a taxing statute, the Court must look to the words of the statute and interpret it in light of what is clearly expressed therein; it cannot imply something which is not expressed or import provisions in the statute so as to support any assumed deficiency."

- iii. Unlike provisions that adopt other statutes *mutatis mutandis* with wide amplitude (including "all allied and ancillary matters"), section 210 contains no such language permitting its application beyond the Income Tax Ordinance. This omission is deliberate and legally significant.



The Income Tax Ordinance, 2001 and the Sales Tax Act, 1990, are distinct fiscal statutes, each having its own machinery provisions, authorities, and jurisdictional contours. Powers under one statute cannot be exercised for the purposes of another unless there is a clear legislative bridge. No such bridge exists in section 210.

- v. Even where provisions of the Income Tax Ordinance are made applicable to sales tax matters *mutatis mutandis* (e.g., through section 11B of the Sales Tax Act), such adoption is generally confined to procedural adaptation and does not automatically import substantive powers like delegation, particularly where such powers affect jurisdiction and authority. Delegation, being a

matter of substantive authority, requires explicit statutory sanction.

8. In light of the foregoing discussion, and having carefully examined the relevant statutory provisions in conjunction with their underlying legislative intent and scheme, we now proceed to address and determine the specific questions that have been posed for our consideration.

8.1 Question No. (i)

Whether, under section 11B of the Sales Tax Act, 1990 (as substituted), an officer below the rank of Commissioner Inland Revenue is competent to pass an appeal effect order?

- i. Upon a plain and contextual reading of the substituted section 11B, it is evident that the legislature has consciously shifted from the earlier framework wherein "Commissioner or an officer of Inland Revenue" was expressly empowered, to a new regime which adopts section 124 of the Income Tax Ordinance, 2001 *mutatis mutandis*.
- ii. A careful examination of section 124 shows that the authority to pass an assessment or amended assessment order, in consequence of appellate directions, is specifically vested in the Commissioner or Commissioner (Appeals), as the case may be. The provision does not refer to "Officer of Inland Revenue" or any subordinate functionary.
- iii. The omission of such expression, which was previously part of section 11B, cannot be treated as accidental or inconsequential. Rather, it reflects a deliberate legislative intent to restrict and



centralize the authority to pass appeal-effect orders in specified senior officers only.

- iv. It is a settled principle of statutory interpretation that where the legislature deletes certain words from a provision, it must be presumed that such deletion carries meaning and purpose. Therefore, the earlier practice allowing subordinate officers (such as ACIR or DCIR) to pass such orders cannot continue under the amended regime. This interpretation finds support from settled law that where a statute prescribes that an act is to be done by a particular authority, it must be done by that authority alone. In **Nazir Ahmad v. King Emperor** (AIR 1936 PC 253), it was held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. The same principle has been consistently followed by the Supreme Court of Pakistan in **IAC Income Tax Vs Micro Pak (Pvt.) Ltd and others**, 2002 PTD 877(SC).



- v. Applying this principle, once the statute specifies "Commissioner", the exercise of such power by any other officer is impermissible. We are mindful of the practical considerations highlighted by the Departmental Representative regarding the administrative functioning of the tax machinery. However, it is a settled principle of law that where a statute prescribes that a particular act is to be performed by a specified authority, it must be done by that authority alone unless the law expressly permits delegation. Administrative expediency, howsoever compelling, cannot override the express or implied mandate of the statute.

In view of the above, an officer below the rank of Commissioner, Inland Revenue, is not legally competent to pass an order under section 11B (as substituted), and any such order would suffer from a jurisdictional defect. The jurisdiction is a foundational question that must be asked at the outset, because if an order is without jurisdiction, then no matter how sound it is on merits, it will be *non est*. In **Ali Muhammad Vs Chief Settlement Commissioner** (2001 SCMR 1822), it was observed that:

"Whenever orders are passed by an officer without caring whether jurisdiction vests in him or not, it prima facie reflects on his conduct as well as competency. It is also to be noted that whenever authority is exercised in such a manner then no other inference can be drawn except that the functionary has transgressed his jurisdiction for the consideration other than judicial one and the courts ceased with such order may recommend any action against the said officer because neither the executive authorities nor judicial forums will pass a wrong order because the jurisdiction in both the capacities is conferred upon such authorities to discharge their functions in accordance with law which has bestowed authority upon them to function in the capacity and if there is abuse of power by such officer, then no hesitation should be felt in passing stringent structure against officer keeping in view norms of justice."



8.2 Question No. (ii)

Whether the provisions of section 210 of the Income Tax Ordinance, 2001, relating to the delegation of powers can be invoked, by virtue of *mutatis mutandis* application of section 124, for the purposes of section 11B of the Sales Tax Act, 1990?

- i. The pivotal issue in the present matter concerns the true scope and legal import of the expression *mutatis mutandis* as employed

in section 11B of the Sales Tax Act, 1990. While the said phrase undoubtedly permits the application of a statutory provision with necessary modifications, its operation is neither unfettered nor capable of unlimited extension.

- ii. The expression *mutatis mutandis*, derived from Latin, literally means "with the necessary changes being made" or "with the respective differences being taken into account." In legal parlance, it signifies that a provision, originally framed in one statutory context, may be applied to another context with such alterations as are required to adapt it to the new situation, without disturbing its essential character, purpose, or legislative intent. The doctrine thus ensures a measure of flexibility in statutory interpretation, enabling courts and authorities to give effect to legislative intent across analogous situations while maintaining coherence and consistency.



iii. However, it is a well-settled principle that the application of *mutatis mutandis* is confined to adjustments of a procedural, contextual, or incidental nature. It does not authorize the importation of wholly independent or substantive provisions that were neither expressly incorporated nor necessarily implied by the legislature. The doctrine cannot be invoked as a vehicle to enlarge the scope of a statutory provision beyond what has been consciously provided.

- iv. In this context, section 11B of the Sales Tax Act, 1990 makes a specific and limited reference to section 124 of the Income Tax Ordinance, 2001. This incorporation is clearly selective and circumscribed, indicating the legislative intent to adopt only that

particular provision, and not the entirety of the Income Tax Ordinance or its ancillary framework.

- v. Contrastingly, section 210 of the Income Tax Ordinance, 2001, which deals with the delegation of powers, constitutes a substantive and enabling provision. It creates an independent statutory mechanism whereby authority may be delegated, and is neither procedural in character nor merely incidental to section 124. As such, it stands on a distinct legal footing and cannot be regarded as automatically attracted or absorbed through the limited incorporation envisaged under section 11B.
- vi. Accordingly, any attempt to apply section 210 through the doctrine of *mutatis mutandis* would amount to extending the provision beyond its permissible limits, thereby attributing to the legislature an intention that is neither expressed nor implied in the statutory scheme.



vii. Delegation of statutory powers is not to be inferred lightly. It must be expressly conferred by law. In the present case:

- a) The Sales Tax Act, 1990, does not contain any provision analogous to section 210.
- b) Section 11B does not expressly or implicitly incorporate section 210.
- c) The doctrine of *mutatis mutandis* cannot be extended to import substantive powers of delegation, particularly where the legislature has chosen not to provide such a mechanism within the Sales Tax statute itself.
- viii. Accepting the Revenue's contention would amount to judicially supplying a provision that the legislature has consciously omitted,

which is impermissible. The superior courts have repeatedly held that delegated authority must flow directly from statute. In **Collector of Customs v. Messrs Abdul Majeed Khan** (PLD 1987 SC 136), the Supreme Court held that powers of taxation authorities must be exercised strictly within the four corners of the statute. In **Messrs Elahi Cotton Mills Ltd. v. Federation of Pakistan** (PLD 1997 SC 582), it was emphasized that fiscal statutes must be strictly construed and nothing can be implied.

- ix. Further, delegation cannot be assumed through interpretative extension. In **Province of Punjab v. Muhammad Aslam** (PLD 2014 SC 654), it was held that powers not expressly conferred cannot be exercised on the basis of inference.
- x. The argument of the Department that the expression *mutatis mutandis* should be construed to import the entire framework of the Income Tax Ordinance, including the delegation of powers under section 210, does not merit acceptance in the facts and circumstances of the present case. The principle of *mutatis mutandis* undoubtedly permits necessary adaptations; however, it cannot be invoked to incorporate substantive provisions which are neither expressly adopted nor necessarily implied. The power of delegation, particularly in fiscal statutes, is a substantive legal authority which must emanate from a clear statutory source. It cannot be presumed or inferred merely on the basis of administrative convenience. In the present case, no provision in the Sales Tax Act, 1990, post-amendment, has been pointed out which authorizes the Commissioner to delegate the specific function of passing appeal effect or remand orders under section



11B. The reliance placed on section 210 of the Income Tax Ordinance, 2001, is misconceived, as the said provision has not been expressly incorporated into the Sales Tax Act, 1990, nor can it be read into the statute through an expansive interpretation of the phrase *mutatis mutandis*.

In view of the above discussion, Section 210 of the Income Tax Ordinance, 2001 cannot be invoked or applied for the purposes of Section 11B of the Sales Tax Act, 1990. Delegation is not permissible without explicit statutory sanction.

8.3 Question No. (iii)

Whether the substitution of section 11B has restricted authority exclusively to the Commissioner/Commissioner (Appeals)?

- i. The legislative transition from the earlier provision to the substituted section is significant. Previously, the statute explicitly allowed both the Commissioner and subordinate officers to act.

The substitution removes this explicit authorization and instead adopts a provision that limits the power to specific authorities.

Such a change must be given its full legal effect. The principle of *expressio unius est exclusio alterius* (express mention of one excludes others) is applied here. By naming only the Commissioner (and Commissioner Appeals, where applicable), the law excludes all other authorities by necessary implication. The substitution has materially altered the legal position by restricting the authority to specified officers. The courts have consistently recognized that legislative changes must be given full effect. Reliance may be placed on the judgment of the Hon'ble Supreme



Court of Pakistan titled as **Commissioner of Income Tax/Wealth Tax Companies Zone-II, Lahore Vs M/s Lahore Cantt Cooperative Housing Society, Lahore and 7 others** (2009 PTD 799). In the said judgment, it was held by the Hon'ble Supreme Court that the societies are not covered by the definition of the Company as provided in section 2(16)(b) of the repealed Income Tax Ordinance, 1979. While enacting the Income Tax Ordinance of 2001, such Cooperative Societies were included in the definition of a Company. This subsequent inclusion of Cooperative Societies by a positive act of legislation is conclusive proof of the fact that the same were excluded in the earlier enactment. In **Pakistan International Airlines v. Federation of Pakistan** (PLD 2012 SC 101), it was held that where the legislature amends or substitutes a provision, the change must be presumed to have been made deliberately. Similarly, in **CIT v. Eli Lilly Pakistan (Pvt.) Ltd.**, (2011 SCMR 1274), it was observed that omission of words from a statute indicates a clear legislative intent.



In view of the above discussion, the answer to the question is affirmative; the substitution of section 11B has the effect of restricting the authority exclusively to the Commissioner or Commissioner (Appeals), thereby excluding subordinate officers.

8.4 Question No. (iv)

Scope of the expression "mutatis mutandis" — whether it includes substantive provisions like delegation?

- i. The expression "mutatis mutandis" is a medieval Latin phrase which denotes "with things changed that should be changed" or

"once the necessary changes have been made", which cannot be muddled or intertwined with the phrase "*ceteris paribus*", which prohibits and bars the changes other than those that are perceptibly articulated. In legal parlance, the expression *mutatis mutandis* generally applies for making certain adjustments of features in a new situation or framework, as a shortcut (an alternative route that is shorter than the one usually taken) in order to avoid reiterating or retelling the same provisions with minor variations. It applies from one case to another with required alterations or modifications within the different sets of circumstances of the cases to avoid repetition, by signifying that the primary criteria shall apply with certain changes. The expression "*mutatis mutandis*" is defined in various lexicons as under:-



- a) Black's Law Dictionary (Revised 4th Edition, 1968; West Publishing Co.) Defines *mutatis mutandis* as "with the necessary changes in point of detail, meaning that matters or things are generally the same, but to be altered when necessary as to names, offices, and the like."
- b) Jowitt's Dictionary of English Law (1st Edition, 1959; Sweet & Maxwell). Lists *mutatis mutandis* as a Latin phrase meaning "with the necessary changes in points of detail."
- c) Oxford Dictionary of Law (5th Edition, 2003; Oxford University Press). Explains *mutatis mutandis* to mean "by changing what needs to be changed," indicating that one thing shall apply to another after making the necessary alterations.

- d) Bouvier's Law Dictionary (3rd Revision, 1914; Boston) – Similarly defines *mutatis mutandis* in substance as "the necessary changes [being made]."
- e) Oxford English Dictionary (3rd Edition, 2003; Oxford University Press) – The OED records *mutatis mutandis* is an adverb meaning "with the necessary changes having been made." (Literally in Medieval Latin: "those things having been changed which need to be changed.")
- f) Cambridge English Dictionary (Cambridge University Press) defines *mutatis mutandis* as "used when comparing two or more things to say that although changes will be necessary in order to take account of different situations, the basic point remains the same."
- g) Collins English Dictionary (via Dictionary.com, 2012 Edition) – Provides a concise definition: "the necessary changes having been made"



The phrase *mutatis mutandis* has been consistently interpreted by superior courts to mean "with the necessary changes in detail," primarily for the purpose of adapting provisions in a manner that facilitates their workable application in a different context. Its scope is limited to adjustments that are essential for implementation and does not extend to the wholesale importation of independent or unrelated provisions.

- iii. In its proper legal sense, the doctrine serves to ensure functional continuity of a provision by permitting only such modifications as are indispensable, while preserving the underlying legislative intent. It operates within a confined sphere and requires a clear

distinction between procedural adaptation and substantive law-making.

- iv. Accordingly, procedural elements, such as limitation periods, timelines, formats, and the manner in which a provision is to be given effect, may legitimately be adapted under the doctrine, as these are incidental to the effective operation of the law. However, substantive powers stand on an entirely different footing. Provisions that create new rights, obligations, or confer jurisdiction, particularly powers such as delegation, require clear, express, and unambiguous statutory authorization. Such powers cannot be inferred or incorporated through interpretative devices like *mutatis mutandis*.



To construe the doctrine as encompassing section 210 of the Income Tax Ordinance, 2001, which deals with the delegation of powers, would amount to an impermissible expansion of its scope.

This would blur the well-recognized boundary between procedural facilitation and substantive legislation, thereby extending the provision beyond its intended limits.

- vi. The expression *mutatis mutandis* in section 11B is confined to procedural adaptation and does not extend to the incorporation of substantive provisions, including those relating to delegation under section 210.
- vii. Authoritative judicial pronouncements, both domestic and comparative, consistently affirm a cautious and restrictive construction of the expression *mutatis mutandis*. In **Muhammad Sharif v. The State** (PLD 1999 SC 1063), the Supreme Court of Pakistan elucidated that the phrase signifies "those changes being

made which must be made," thereby underscoring that only indispensable and context-driven modifications are permissible when transplanting one statutory provision into another setting. The emphasis, therefore, is not on a broad or liberal importation of provisions, but on a disciplined adaptation confined strictly to what is necessary to render the provision workable in the new context, without disturbing its core character or underlying legislative intent.

- viii. A similar interpretative approach is reflected in Indian jurisprudence. In **Vasudev Anant Kulkarni v. Executive Engineer** (1995 ACJ 97), the Supreme Court of India observed that the expression "mutatis mutandis" denotes application "with the appropriate alterations being made," thereby highlighting that the process involves measured and contextually justified adjustments. The Court further clarified that the phrase does not authorize unfettered modification; rather, it contemplates only those adjustments which are essential to align the provision with the new factual or statutory framework.



- ix. This principle was articulated with greater precision in **Ashok Service Centre v. State of Orissa** (1983 2 SCR 363), where the Court explained that the application of an earlier enactment to a subsequent one *mutatis mutandis* embodies the concept of adaptation, but strictly to the extent required for achieving the intended purpose. The Court cautioned that such adaptation must not result in any alteration of the essential nature, substance, or scheme of the original provision; rather, the provision must retain

its identity while being suitably adjusted to fit the new legislative context.

- x. Likewise, the Supreme Court of Canada, in *R. v. Gauthier*, [(1977) 1 SCR 441], succinctly encapsulated the doctrine by holding that *mutatis mutandis* means "making all necessary changes, but necessary changes only." This formulation reinforces the universally accepted limitation inherent in the expression, namely, that the scope of permissible modification is confined to necessity and does not extend to substantive transformation or expansion.
- xi. In synthesis, therefore, across jurisdictions, the phrase *mutatis mutandis* is consistently understood as mandating a careful and minimalistic process of adaptation. It permits only such alterations as are indispensable to make the incorporated provision function effectively in its new setting, while preserving its essential nature, structure, and legal effect. It does not, and cannot, serve as a vehicle for importing substantive powers, enlarging jurisdiction, or effecting material changes that would alter the fundamental character of the original provision.



In view of the above, it is evident that the doctrine cannot be invoked to import substantive provisions, particularly those conferring jurisdiction or authority, which require explicit legislative sanction and cannot arise by implication.

8.5 Question No. (v)

Does administrative practice validate orders passed by subordinate officers?

- i. Administrative convenience or past practice cannot override clear statutory provisions. It is a fundamental principle that there is no estoppel against law. The principle that there is no estoppel against law is well entrenched. In **Messrs Mustafa Impex v. Government of Pakistan** (PLD 2016 SC 808), the Supreme Court held that executive practice cannot override statutory mandate. In **Killing Valley Tea Company V Secretary of State** [(1 ITC 54 (Calcutta))] it was held that taxation authorities must strictly adhere to statutory provisions regardless of past practice. Even if, in practice, subordinate officers have been passing such orders, such practice:

- a) Cannot create jurisdiction where none exists;
- b) Cannot cure a defect of competence;
- c) Cannot prevail against explicit legislative intent.

Administrative practice has no legal sanctity in the face of clear statutory provisions and cannot validate orders passed without lawful authority.



8.6 Question No. (vi)

Whether such an order is void *ab initio* or a curable irregularity?

- i. Jurisdictional defects go to the root of the matter. Where an order is passed by an authority lacking legal competence:
 - a) The defect is not procedural but substantive.
 - b) The order is treated as void *ab initio* (i.e., null from inception);
 - c) Such a defect is not curable under any saving or irregularity provisions unless specifically provided by law.
- ii. In the present context, since the authority to pass the order is confined to specific authorities, any action by an unauthorized

officer amounts to usurpation of jurisdiction. Jurisdictional defects render proceedings void *ab initio*. This principle is firmly established in **Kiran Singh v. Chaman Paswan** (AIR 1954 SC 340; 1955 SCR 117). It was held that a defect of jurisdiction strikes at the root and renders proceedings null. The same principle has been applied in **Karachi Dock Labour V. Quality Builders** [PLD 2016 SC 121, Para 12] wherein it was held:

"..... a determination made and decision given by a court or other forum performing judicial functions (or even quasi-judicial functions) having no jurisdiction is a nullity in the eyes of law."

In **Muslim Commercial Bank Ltd V. Ahmed Ali and another** (2007 SCMR 38), it was held that jurisdictional defects cannot be cured by consent or acquiescence.



Thus, keeping in view the above, an order passed by an officer not competent under section 11B is void *ab initio* and liable to be annulled on this ground alone.

9. Conclusion

9.1 In view of the foregoing discussion, it is conclusively held that after the substitution of section 11B through the Finance Act, 2024:

- i. The authority to pass appeal effect orders is exclusively vested in the Commissioner or Commissioner (Appeals).
- ii. Subordinate officers lack jurisdiction to pass such orders.
- iii. The delegation provision contained in section 210 of the Income Tax Ordinance, 2001, is not applicable.
- iv. The doctrine of *mutatis mutandis* is limited to procedural adaptation and does not extend to substantive powers.

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- iii. The delegation provision contained in section 210 of the Income Tax Ordinance, 2001, is not applicable.
- iv. The doctrine of *mutatis mutandis* is limited to procedural adaptation and does not extend to substantive powers.



v. Any order passed in contravention of this framework is void *ab initio* and without legal effect.

9.2 The foregoing conclusions are in complete consonance with the well-settled principles enunciated by the superior courts concerning the strict construction of fiscal statutes, the necessity of lawful jurisdictional competence, and the inherent limitations on delegated authority. In consequence thereof, the appeal preferred by the appellant stands allowed, and the impugned orders passed by the subordinate authorities are hereby annulled.

9.3 Since the matter has been adjudicated on the foundational issue of jurisdiction, being a defect that strikes at the very root of the proceedings, it is neither necessary nor appropriate to enter into an examination of the case on the merits. However, it is clarified that the

parties shall remain at liberty to avail themselves of such remedies as may be available to them under the law, if so advised.

9.4 It is further emphatically observed that this Tribunal, being a creature of statute, derives its authority strictly within the four corners of the law and cannot, under any guise of interpretation, supply omissions, cure defects, or fill lacunae in the statutory framework. Any such exercise would amount to judicial legislation, which is wholly impermissible. Where the legislature, in its wisdom, has consciously confined the exercise of a power to a specified authority and has not provided for its delegation, the Tribunal cannot extend or enlarge the scope of such power on considerations of convenience, equity, or administrative necessity. The absence of an enabling provision must be given its full effect, and any perceived hardship or procedural vacuum cannot be remedied by interpretative innovation. The duty of this



Tribunal is confined to interpreting the law as it stands, and not to reconstruct it. Accordingly, any attempt to validate actions of subordinate officers by invoking implied authority or expansive interpretation is legally untenable and stands rejected.

9.5 Before parting with this order, it is considered appropriate to observe that the present controversy has arisen primarily due to the absence of a clear statutory mechanism in section 11B, post its substitution through the Finance Act, 2024, with regard to the manner and authority for passing appeal effect orders. To obviate such ambiguities and to prevent recurrence of avoidable litigation, it is required that the Federal Board of Revenue examine this issue at the policy level and, if deemed appropriate, propose suitable legislative amendments in section 11B of the Sales Tax Act, 1990. Such legislative clarification would ensure certainty in the field, promote uniformity in practice, and safeguard both the interests of the revenue and the rights of taxpayers.



(M. M. AKRAM)
JUDICIAL MEMBER

(SHARIF UD DIN KHILJI)
MEMBER

TRUE COPY

STA No. 13/2026, MA (AG) STA No. 18/2026

Appeal No	16-4-2026
Date of Order	16-4-2026
TRUE COPY OF ORDER FORWARDED TO	
1. APPELLANT:	
2. RESPONDENT:	CTR, LTO, Islamabad.
2.200w 16-4-26	
ASSISTANT REGISTRAR APPELLATE TRIBUNAL INLAND REVENUE ISLAMABAD	