

IN THE APPELLATE TRIBUNAL INLAND REVENUE  
LAHORE BENCH, LAHORE

MA(Ag) No.47/LB/2012  
(Tax year 2005)

MA(Ag) No.48/LB/2012  
(Tax year 2005)

ITA No.764/LB/2011  
(Tax year 2009)

ITA No.66/LB/2011  
(Tax year 2005)

ITA No.67/LB/2011  
(Tax year 2005)

M/s. Qureshi Textile & General Mills, Ltd. Appellant  
Lahore. N.T.N.0225888 - 9

Versus

CIR, LTU, Lahore. Respondent

Appellant by : Mr. Faisal Iqbal Kh., F.C.A  
Respondent by : None

ITA No.263/LB/2012  
(Tax year 2005)

CIR, LTU, Lahore. Appellant

Versus

M/s. Qureshi Textile & General Mills, Ltd. Respondent  
Lahore. N.T.N.0225888 - 9

Appellant by : None  
Respondent by : Mr. Faisal Iqbal Kh., F.C.A

Date of hearing : 25.03.2015  
Date of order : 25.03.2015

ORDER

Through this consolidated order we intend to dispose of two miscellaneous applications for raising additional grounds, three appeals relating to tax year 2005 & 2009 preferred by the taxpayer and one by the



Department. In the appeals relating to tax year 2005 issue of limitation is involved while for the tax year 2009 the levy of Workers Welfare Fund has been assailed. Since common issue is involved all the appeals are being disposed of by this single order.

2. For the tax year the applicant company sought permission to raise the following additional grounds:-

- a) That the action taken u/s 122(5A) read with Section 122(1) by Additional Commissioner Inland Revenue, Audit-A, Large Taxpayer Unit, Lahore is without any lawful jurisdiction.
- b) That the action taken u/s 122(5A) read with Section 122(1) by Additional Commissioner Inland Revenue, Audit-A, Large Taxpayer Unit, Lahore is patently time barred and cannot be enforced on the appellant.



Since the revised grounds taken by the applicant company raise vital issue, the applicant is allowed to plead its case on the basis of additional grounds.

#### Tax year 2005:-

3. Facts relevant for the disposal of present appeals in brief are that the returns filed by the taxpayer, a public limited company, deriving income from manufacturing and sale of textile products were firstly treated as deemed orders in terms u/s 120(I) of the Income Tax Ordinance, 2001. Subsequently the deemed orders were considered erroneous in so far as prejudicial to the interest of revenue. Therefore, a show cause notice was issued on

09.2.2011 for compliance on 23.02.2011 and considering the reply submitted by the taxpayer as unsatisfactory amended orders were passed on 23.2.2011 and 15.2.2011. On first appeal the taxpayer has assailed the issue of proration of expenses only which was decided in favour of the taxpayer. However, in the present appeals the taxpayer has challenged the orders passed by the Taxation Officer on the point of limitation. On the contrary, the Department has assailed the relief allowed by the learned CIR(A) as unjustified and uncalled for. Since on the issue of limitation the Tribunal has expressed contrary views a Full Bench has been constituted to settle the issue forever.



The learned A.R, at the outset of the proceedings, raised a preliminary objection against the maintainability of the amended orders passed by the Taxation Officer. He stated that the amended orders were time barred and merit cancellation. To substantiate his contention, he stated that returns for the two tax periods i.e. 30.09.2004 and 30.06.2005 were respectively filed on 29.09.2005 and 31.12.2005 which by operation of law become deemed order and limitation to amend the same within five years stood expired on 30.09.2010 and 31.12.2010. Since the amended orders were respectively passed on 23.02.2011 and 15.02.2011 these were

patently time barred and not sustainable in the eyes of law. He further urged that the law prevailing at the time of filing of returns is applicable and the amendment brought subsequently through Finance Act, 2009 cannot be applied retrospectively. On the contrary, the stance of the Department is that the limitation provided in Section 122(2), has been extended through Finance Act, 2009 according to which "no order under sub-section (1) shall be amended by the Commissioner after the expiry of five years from the end of the financial year in which the Commissioner has issued or treated to have issued the assessment order to the taxpayer". Since the deemed order on the date of amendment in Section 122(2) has not become time barred the amendments made by the Taxation Officer were within limitation and no interference by the Tribunal is required. For convenience Section 122(2) as it stood before amendment and after amendment is reproduced hereunder:-



Section 122(2) (before amendment).

"An assessment order shall only be amended under sub-section (1) within five years after the Commissioner has issued or is treated as having issued the assessment order on the taxpayer."

Section 122(2) (after amendment through Finance Act, 2009).

"No order under sub-section (1) shall be amended by the Commissioner after the expiry of five years from the end of the financial year in which the Commissioner has

issued or treated to have issued the assessment order to the taxpayer".

5. We have given due consideration to the facts of the case and observed that the point of controversy between the rival parties is whether the law prevailing at the time of filing of appeal is applicable or the amendments brought through Finance Act, 2009 have the retrospective effect. After hearing the learned A.R we have observed that the issue in hand has already been settled upto the level of Apex Court of the country and needs no further deliberation. In the case re: Commissioner Inland Revenue v/s Maj. Gen (R) Dr. C.M. Anwar etc. bearing ITR 01/2013 a similar question has been referred and decided by the Honourable Lahore High Court. For ready reference the question referred to the Honourable High



Court is reproduced hereunder:-

"whether in the facts and circumstances of the case the amendment brought in sub-section (1) of Section 122 being procedural in nature, shall not operate retrospectively ?

The Honourable Lahore High Court after considering the two provisions cited above has ultimately held that the "limitation as it stood at the time of filing of return will apply to the case of the petitioner." (underline is for emphasis) Further the Department has also assailed the said order of Honourable Lahore High Court before the Apex Court and the Honourable Supreme Court of Pakistan in the judgment delivered in Civil Petition

No.1306/2014 dated 30.09.2014 has dismissed the departmental appeal with the following observation:-

"The conclusion drawn by the learned High Court that Section 122(2) as amended by the Finance Act, 2009 shall have no retrospective effect and would not annul the past and closed transaction, when the assessment in favour of the respondent as per deeming clause u/s 120 had become conclusive and period for the purpose of invoking earlier Section 122(2) had expired on 23.09.2009, does not call for interference in light of the clause. This petition has not merits which is hereby dismissed."

6. We have considered the facts of the case in the light of judgments cited supra and observed that the amended orders passed by the Taxation Officer were hit by limitation and are not sustainable and the learned CIR(A) has erred in law to maintain the same. Hence, the orders of the authorities below are vacated and the appeals are allowed accordingly.

Tax year 2009:-

7. In this appeal the taxpayer has assailed the levy of Worker's Welfare Fund charged by the Taxation Officer and upheld in first appeal by the learned CIR(A) vide order dated 18.05.2011 as unjustified. The Taxation Officer has charged the Workers' Welfare Fund on the basis of amendment brought through Finance Ordinance 2006 & 2008, and the learned CIR(Appeals) upheld the treatment which has brought the taxpayer in further appeal before us.



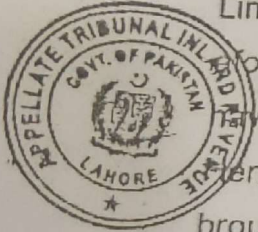
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MA(Ag) No.47etc./LB/2012

8. The learned AR argued that the action of both the authorities below are contrary to the dictum enunciated by the Honourable Lahore High Court in its judgment reported as (2011) 104 Tax 241. The learned DR on the contrary supported the orders of the authorities below simply by reiterating the reasons assigned by them.

9. We have given due consideration to the rival arguments and also gone through the relevant record available on file. The issue in hand has already been settled by the Honourable Lahore court in the case cited as (2011) 104 Tax 241 and again upheld by its judgment bearing WP No.8877/2013 in the case of M/s. Nishat Mills Limited Vs. Federation of Pakistan. Keeping in view the foresaid authoritative judgments of Lahore High, we have no option except to vacate the impugned order. Hence, the levy of WWF on the basis of amendment brought in Worker's Welfare Fund Ordinance through Finance Act, 2006 & 2008 is disapproved and the orders of the authorities below are vacated. The appeal preferred by the taxpayer is allowed according.

10. All the appeals as well as the miscellaneous applications are disposed of in the manner stated above.



Sd/

( MUHAMMAD WASEEM CH. )

Judicial Member

Sd/

( MUHAMMAD AKRAM TAHIR )

Accountant Member

Sd/

( CH. SHAHID IQBAL DHILLON )

Judicial Member

Mar.15/156-162

*Handwritten signature and date:*  
9-4-15