

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ**HAMID ASHRAF (LATE) through L.Rs. and others---Petitioners****Versus****COMMISSIONER INLAND REVENUE, LAHORE---Respondent**

Civil Petitions Nos. 283-L to 286-L of 2018, decided on 5th March, 2020.

(On appeal from the order of Lahore High Court, Lahore dated 21.11.2017 passed in Income Tax References Nos. 304 to 307 of 2014)

Income Tax Ordinance (XLIX of 2001)---

----Ss. 120, 171 (Explanation) & 171(2)(c)---Tax refund---Due date---Additional payment or compensation for delayed refund---For the purposes of compensation, tax refund became due from the date of the refund order and not from the date of deemed assessment under S. 120 of the Income Tax Ordinance, 2001.

Explanation to section 171 of the Income Tax Ordinance, 2001 ('the Ordinance') provided that for the purposes of compensation, tax refund becomes due from the date of the refund order and not from the date of deemed assessment under section 120. In other words, the mechanism of refund under the Ordinance, worked on the basis of a refund order passed on an application for refund filed by tax payer and duly scrutinized by the Commissioner and was not payable simply on the basis of the deemed assessment under section 120. The scheme of refund provided under the statute overrode the deeming provision of section 120. Deemed assessment under section 120 was, therefore, not a substitute for a refund order. It appeared, as if the return of tax or refund by the Exchequer to a taxpayer required scrutiny by the Commissioner and could not be deemed to be an amount outstanding in favour of the taxpayer. The taxpayer was free to apply for refund under section 170, immediately after the filing of the tax return or the deemed assessment. Section 170 provided a fast-tracked mechanism for refund as it specified time for the passing of a refund order and the remedy of appeal in case of failure to pass any such order. Other than this fast-track refund mechanism there was no scheme of automatic refund on the basis of the deemed assessment as was made amply clear by the Explanation to section 171 of the Ordinance.

Explanation to section 171 of the Ordinance enjoyed retrospective effect because its purpose was "removal of doubt" besides supplying necessary statutory "clarification." However, the retrospective operation of the Explanation shall not affect past and closed transactions where the benefit of refund and compensation had already been extended to the taxpayer on the basis of deemed assessment under section 120.

In the present case, the applications for refund filed by the petitioner-taxpayer under section 170 were taken up by Assistant Commissioner Inland Revenue in the year 2010 and initially rejected. After remand of the matter by Commissioner Inland Revenue (CIR) (Appeals), the Deputy Commissioner Inland Revenue (DCIT) passed refund order on 22-03-2013. The matter remained under litigation between the department and the taxpayer, and refund order was passed on 23-03-2013, rather than 15-02-2011, when the CIR (Appeals) simply remanded the matter to the DCIT to decide the same afresh. Therefore, the date of refund order passed by DCIT i.e., 22-03-2013 would be the date when the refund became due as per section 171(2)(c) [instead of section 171(2)(a)] of the Ordinance.

Shahbaz Butt, Advocate Supreme Court along with Iqbal Hashmi, Advocate Supreme Court for Petitioners (in all cases).

Mian Yousaf Umer, Advocate Supreme Court along with Imtiaz A. Shaukhat, Advocate-on-Record for Respondent (in all cases).

Date of hearing: 5th March, 2020.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---The question before us is to determine the date when tax refund becomes due to the petitioner (taxpayer) under the Income Tax Ordinance, 2001 (the "Ordinance") for the purposes of Additional Payment or compensation for delayed refund.

2. Brief facts are that the petitioner filed tax returns along with refund applications for Tax Years 2004 to 2008. The refund applications were taken up under section 170 and rejected by the Assistant Commissioner Inland Revenue, Regional Tax Office, Lahore on 23.09.2010. On appeal filed by the petitioner before the Commissioner Inland Revenue (Appeals) [CIR (Appeals)], Lahore the case was remanded to Taxation Officer on 15.02.2011 for a fresh decision. The Deputy Commissioner Inland Revenue (DCIT) decided the matter on 22.03.2013 granting refund to the petitioner, as well as, additional payment (compensation) for delayed refund w.e.f 15.02.2011 i.e., the date when CIR (Appeals) decided the appeals and remanded the matters to the DCIT. Petitioner, aggrieved of the date of the refund due, preferred appeals before CIR (Appeals) which were dismissed on the question of jurisdiction; holding that no appeal lay against an order under section 171 of the Ordinance. The petitioner filed an appeal before the Appellate Tribunal Inland Revenue (ATIR) which was allowed vide order dated 12.09.2014, granting Additional Payment (compensation) to the petitioner for delayed refunds from the date of the deemed assessment under section 120 of the Ordinance when the petitioner had filed the annual income tax returns for the relevant tax years. The tax department assailed the order before the High Court by filing appeals which were allowed vide impugned order dated 21.11.2017 holding the date of the refund due in terms of section 171(2)(a) to be w.e.f 22.03.2013 - the date when DCIT passed the refund order in favour of the petitioner.

3. We have heard the learned counsel for the parties. The petitioner defended the order of the Tribunal while the respondent department supported the view of the High Court in the impugned judgment. We have examined the relevant provisions of the Ordinance, in particular, sections 120, 170, 171 and the Explanation inserted in section 171(2) vide Finance Act, 2013, dated 01.07.2013. These provisions have been reproduced in the Schedule to this judgment for ready reference.

4. Under the scheme of the Ordinance (Chapter X, Part VI) a taxpayer, who has paid tax in excess of the amount which is properly chargeable under the Ordinance, may apply to the Commissioner for the refund of the excess under section 170. The application for refund has to be in the prescribed form and verified in the prescribed manner and is to be made within three years of the later of the (i) assessment order (under section 120) issued by the Commissioner to the taxpayer for the tax year to which the refund application relates or (ii) the date on which the tax was paid. The Commissioner if satisfied that the tax has been overpaid by the taxpayer may do the following in a sequential manner: (i) apply the excess in reduction of any tax due from the taxpayer under the Ordinance. (ii) apply the balance, if any, to pay any outstanding liability of the taxpayer to pay other taxes and (iii) refund the remainder, if any to the taxpayer. The Commissioner is to decide the refund application within 60 days of the receipt of the application and decide the same after granting a hearing to the taxpayer. Any one aggrieved of the refund order or the failure of the Commissioner to decide the application within the specified time can file an appeal as provided in the Ordinance. Once the refund order has been passed which may entail cash refund or adjustment against pending liability as envisaged under section 170(3). Thereafter, if the refund is delayed and not paid to the taxpayer within three months of the date on which it becomes due, the taxpayer gets entitled to compensation at the rate of KIBOR plus 0.5 percent per annum of the amount of refund computed for the period commencing at the end of the three month period and ending on the date on which it is paid. Subsection (2) of section 171 refers to dates which are treated to be the dates when the refund becomes due. Sections 170 and 171, therefore, provide a complete mechanism for claiming tax refund by a taxpayer. Such an application undergoes proper scrutiny and only upon satisfaction of the Commissioner is the refund order issued.

5. The impression that deemed assessment under section 120, when the annual tax return filed under section 114 shows a refund payable to the taxpayer, passes for a refund order, stands dispelled by the Explanation to section 171 inserted through Finance Act, 2013, which states as under:

Explanation.-- For the removal of doubt, it is clarified that where a refund order is made on an application under subsection (1) of section 170, for the purpose of compensation, the refund becomes due from the date refund order is made and not from the date the assessment of income treated to have been made by the Commissioner under section 120."

For removal of any doubt and as a clarification, the Explanation provides that for the purposes of compensation, tax refund becomes due from the date of the refund order and not from the date of deemed assessment under section 120. In other words, the mechanism of refund under the Ordinance, works on the basis of a refund order passed on an application for refund filed by tax payer and duly scrutinized by the Commissioner and is not payable simply on the basis of the deemed assessment under section 120. The scheme of refund provided under the statute overrides the deeming provision of section 120. Deemed assessment under section 120 is, therefore, not a substitute for a refund order. It appears, as if the return of tax or refund by the Exchequer to a taxpayer requires scrutiny by the Commissioner and cannot be deemed to be an amount outstanding in favour of the taxpayer. The taxpayer is free to apply for refund under section 170, immediately after the filing of the tax return or the deemed assessment. Section 170 provides a fast tracked mechanism for refund as it specifies time for the passing of a refund order and the remedy of appeal in case of failure to pass any such order. Other than this fast-track refund mechanism there is no scheme of automatic refund on the basis of the deemed assessment as is made amply clear by the Explanation. The Explanation enjoys retrospective effect because its purpose is "removal of doubt" besides supplying necessary statutory "clarification." However, the retrospective operation of the Explanation shall not affect past and closed transactions where the benefit of refund and compensation has already been extended to the taxpayer on the basis of deemed assessment under section 120.

6. The instant case pertains to pre-2013, it has been argued by the petitioner that the tax refund became due from the date of the deemed assessment under section 120 of the Ordinance. This argument is not available to the petitioner. Firstly, the case of the petitioner is not a past and closed transaction and secondly, the petitioner had moved a refund application under section 170 of the Ordinance which was processed and finally refund order was passed on 22.03.2013.

7. In the present case, the applications for refund filed by the petitioner under section 170 were taken up by Assistant Commissioner Inland Revenue in the year 2010 and initially rejected. After remand of the matter by CIR (Appeals), DCIT passed refund order on 22.03.2013. The matter remained under litigation between the department and the taxpayer, and refund order was passed on 23.03.2013, rather than 15.02.2011, when the CIR (Appeals) simply remanded the matter to the DCIT to decide the same afresh. Therefore, the date of refund order passed by DCIT i.e., 22.03.2013 will be the date when the refund becomes due as per section 171(2)(c) [instead of section 171(2)(a)] as correctly noted by the High Court.

8. For the above reasons, these petitions fail and are, therefore, dismissed.

SCHEDULE

"120. Assessments.-(1) Where a taxpayer has furnished a complete return of income (other than a revised return under subsection (6) of section 114) for a tax year ending on or after the 1st day of July, 2002,-

- (a) the Commissioner shall be taken to have made an assessment of taxable income for that tax year, and the tax due thereon, equal to those respective amounts specified in the return; and
- (b) the return shall be taken for all purposes of this Ordinance to be an assessment order issued to the taxpayer by the Commissioner on the day the return was furnished.

(1A) Notwithstanding the provisions of subsection (1), the Commissioner may [conduct audit of the income tax affairs of a person] under section 177 and all the provisions of that section shall apply accordingly.]

(2) A return of income shall be taken to be complete if it is in accordance with the provisions of subsection (2) of section 114.

(3) Where the return of income furnished is not complete, the Commissioner shall issue a notice to the taxpayer informing him of the deficiencies (other than incorrect amount of tax payable on taxable income, as specified in the return, or short payment of tax payable) and directing him to provide such information, particulars, statement or documents by such date specified in the notice.

(4) Where a taxpayer fails to fully comply, by the due date, with the requirements of the notice under subsection (3), the return furnished shall be treated as an invalid return as if it had not been furnished.

(5) Where, in response to a notice under subsection (3), the taxpayer has, by the due date, fully complied with the requirements of the notice, the return furnished shall be treated to be complete on the day it was furnished and the provisions of subsection (1) shall apply accordingly.

(6) No notice under subsection (3) shall be issued after the [expiry of one hundred and eighty days from the end of the financial year in which return was furnished], and the provisions of subsection (1) shall apply accordingly.

170. Refunds.- (1) A taxpayer who has paid tax in excess of the amount which the taxpayer is properly chargeable under this Ordinance may apply to the Commissioner for a refund of the excess.

(1A) Where any advance or loan, to which sub-clause (e) of clause (19) of section 2 applies, is repaid by a taxpayer, he shall be entitled to a refund of the tax, if any, paid by him as a result of such advance or loan having been treated as dividend under the aforesaid provision.

(2) An application for a refund under subsection (1) shall be -

(a) made in the prescribed form;

(b) verified in the prescribed manner; and

(c) made within [three] years of the later of -

(i) the date on which the Commissioner has issued the assessment order to the taxpayer for the tax year to which the refund application relates; or

(ii) the date on which the tax was paid.

(3) Where the Commissioner is satisfied that tax has been overpaid, the Commissioner shall -

(a) apply the excess in reduction of any other tax due from the taxpayer under this Ordinance;

(b) apply the balance of the excess, if any, in reduction of any outstanding liability of the taxpayer to pay other taxes; and

(c) refund the remainder, if any, to the taxpayer.

(4) The Commissioner shall, within [sixty] days of receipt of a refund application under subsection (1), serve on the person applying for the refund an order in writing of the decision [after providing the taxpayer an opportunity of being heard].

(5) A person aggrieved by-

(a) an order passed under subsection (4); or

(b) the failure of the Commissioner to pass an order under subsection (4) within the time specified in that subsection, may prefer an appeal under Part III of this Chapter.

171. Additional payment for delayed refunds.- (1) Where a refund due to a taxpayer is not paid within three months of the date on which it becomes due, the Commissioner shall pay to the taxpayer a further amount by way of compensation at the rate of [KIBOR plus 0.5 per cent] per annum of the amount of the refund computed for the period commencing at the end of the three month period and ending on the date on which it was paid.

(2) For the purposes of this section, a refund shall be treated as having become due --

- (a) in the case of a refund required to be made in consequence of an order on an appeal to the Commissioner (Appeals), an appeal to the Appellate Tribunal, a reference to the High Court or an appeal to the Supreme Court, on the date of receipt of such order by the Commissioner;[or]
- (b) in the case of a refund required to be made as a consequence of a revision order under section [122A], on the date the order is made by the Commissioner; or
- (c) in any other case, on the date the refund order is made.

Explanation.-- For the removal of doubt, it is clarified that where a refund order is made on an application under subsection (1) of section 170, for the purpose of compensation, the refund becomes due from the date refund order is made and not from the date the assessment of income treated to have been made by the Commissioner under section 120."

MWA/H-6/SC Petition dismissed.