

## [Supreme Court of Pakistan]

**Present: Umar Ata Bandial, Syed Mansoor Ali Shah and Muhammad Ali Mazhar, JJ**

**COMMISSIONER INLAND REVENUE, ZONE-IV, LAHORE---Petitioner**

**Versus**

**Messrs PANTHER SPORTS AND RUBBER INDUSTRIES (PVT.) LTD. and others---Respondents**

Civil Petition No. 1691-L of 2018, decided on 21st September, 2021.

(Against the orders of Lahore High Court, Lahore dated 05.03.2018 passed in W.P. No. 133023 of 2018)

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

---Ss. 161(1A), 165(2B) & 174(3)---Income Tax Rules, 2002, Rr. 29(4) & 44(4)---Books of account, documents and records to be maintained for a period of six years---Scope of section 174(3) of the Income Tax Ordinance 2001---Taxpayer is obliged to maintain the record under section 174(3) of the Income Tax Ordinance, 2001 for a period of six years and the taxpayer cannot be compelled to produce the record for a tax year beyond the period of six years as stipulated in section 174(3) of the Ordinance---Supreme Court approved the view expressed by the Lahore High Court in the case reported as Maple Leaf Cement Factory Ltd v. Federal Board of Revenue 2016 PTD 2074.

Section 174 of the Income Tax Ordinance, 2001 ('the Ordinance') creates an obligation on the taxpayer to maintain such accounts, documents and records as prescribed for a period of six years, except in case of pending proceedings, where the obligation of a taxpayer to maintain the record is till the final decision of the proceedings, while the same provision protects the taxpayer from being asked to produce the record beyond the said period. The tax department is under an obligation to be vigilant and efficient enough so as to proceed against a taxpayer within the statutory timeframe provided under section 174(3) of the Ordinance.

In the context of the present case even though there is no specific limitation for issuance of notices under section 161(1A) or 165(2B) of the Ordinance or Rule 44(4) of the Income Tax Rules, 2002 ('the Rules') but these provisions cannot be actualized or given effect to unless the record, available with the taxpayer, is examined and verified by the tax authorities. Since the said provisions of law require taxpayer to maintain record for a period of six years, hence notices beyond a period of six years cannot be given effect to. As the taxpayer is under no legal obligation to maintain tax records after the said statutory period, any such notices demanding the taxpayer to furnish such information are inconsistent with the clear provisions of the Ordinance and hence unlawful.

Even though notices under sections 161(1A), 165(2B) of the Ordinance and Rule 44(4) of the Rules have no prescribed period of limitation, the statutory timeframe kicks in the minute the time period under section 174(3) is exhausted rendering such notices ineffective and unenforceable, attracting no penal consequences for the taxpayer. It is however to be noted that the department is only restricted where it seeks record beyond the statutory period under section 174(3) from the taxpayer but is otherwise free to proceed if the action or proceedings under the Ordinance are based on the record already in possession of the department.

Supreme Court approved the view expressed in the case reported as Maple Leaf Cement Factory Ltd v. Federal Board of Revenue 2016 PTD 2074, whereas the view taken in the case reported as Habib Bank Limited v. Federation of Pakistan 2013 PTD 1659 was disapproved.

Habib Bank Limited v Federation of Pakistan 2013 PTD 1659 disapproved.

Maple Leaf Cement Factory Ltd. v. Federal Board of Revenue 2016 PTD 2074 approved.

Ch. Muhammad Zafar Iqbal, Advocate Supreme Court (video-link - Lahore) along with Naeem Hassan, Secy (Lit.) FBR for Petitioner.

Nemo for Respondents.

Date of hearing: 21st September, 2021.

**JUDGMENT**

**SYED MANSOOR ALI SHAH, J.**---The petitioner seeks leave to appeal against order dated 05.03.2018 of the High Court whereby the notices<sup>1</sup> issued to the respondent taxpayer in the years 2017 regarding tax years 2007 and 2009, seeking statements under section 165 of the Income Tax Ordinance, 2001 ("Ordinance"), reconciliation statements under Rule 44(4) of the Income Tax Rules, 2002 ("Rules") and recovery under section 161(1A) of the Ordinance were set aside on the ground that a taxpayer cannot be asked to furnish record beyond the period of six years after the end of the tax year to which it relates, as provided under section 174(3) of the Ordinance.

2. The respondent challenged the said notices through a constitutional petition before the Lahore High Court. Relying on its earlier decision in *Maple Leaf*<sup>2</sup>, the High Court allowed the petition and set aside the notices. The principle settled in *Maple Leaf* is that as the taxpayer is under no obligation to maintain records after a period of six years under section 174(3) of the Ordinance, therefore, any notice requiring a taxpayer to furnish records beyond the statutory period of six years is not lawful and no penal action could be taken against the taxpayer under such a notice.

3. We have heard the learned counsel for the petitioner at length and perused the record. The respondent taxpayer was under an obligation to deduct tax from an amount to be paid to a recipient at the time and in the manner specified in section 158 of the Ordinance. Section 165 read with Rule 44(4) of the Rules requires a taxpayer, who deducts tax as aforesaid, to furnish a Statement/Reconciliation Statement giving details of the amount of tax deducted and collected from a recipient. The said Statement and Reconciliation Statement has to be prepared on the basis of the tax records maintained by the taxpayer under the law.<sup>3</sup> A taxpayer, under the law, is to retain tax records under section 174(3) of the Ordinance read with Rule 29(4) of the Rules for a period of six years after the end of the tax year to which they relate.

4. Section 174(1) binds a taxpayer to maintain such accounts, documents and records as may be prescribed. Rule 29(1) of the Rules provides a list of such records. Subsection (3) of section 174 makes the duty of the taxpayer to maintain the records for a period of six years. Rule 29(4) reiterates the same timeline. Time based obligation of maintaining records contemplated under the Ordinance and the Rules is a legislative mandate that promotes efficient and smart fiscal administration and governance. It is underlined that the Ordinance is largely structured around time-framed provisions in order to make the taxing mechanism certain and transparent and the tax administration and tax governance smarter and efficient. Reference, with advantage, can be conveniently made to sections 120 (assessment), 122 (amendment of assessment) and 221 (rectification of mistakes) of the Ordinance in this regard.

5. Reading of the Ordinance and the Rules envisages that any proceedings against a taxpayer that is based on the tax records maintained by the taxpayer should be initiated within a fixed timeframe. Section 174 creates an obligation on the taxpayer to maintain such accounts, documents and records as prescribed for a period of six years, except in case of pending proceedings, where the obligation of a taxpayer to maintain the record is till the final decision of the proceedings (exception is not attracted in the present case), while the same provision protects the taxpayer from being asked to produce the record beyond the said period. As notices under sections 161, 165 and Rule 44(4) can only be replied to on the basis of the record maintained by the taxpayer, joint reading of sections 161, 165 and Rule 44(4) and section 174(3) and Rule 29 establishes that the tax department is under an obligation to be vigilant and efficient enough so as to proceed against a taxpayer within the statutory timeframe provided under section 174(3). Even though there is no specific limitation for issuance of notices under section 161(1A) or 165(2B) or Rule 44(4) but these provisions cannot be actualized or given effect to unless the record, available with the taxpayer, is examined and verified by the tax authorities. Since the aforesaid provisions of law require taxpayer to maintain record for a period of six years, hence notices beyond a period of six years cannot be given effect to. As the taxpayer is under no legal obligation to maintain tax records after the said statutory period, any such notices demanding the taxpayer to furnish such information are inconsistent with the clear provisions of the Ordinance and hence unlawful. Harmonized reading of the statute requires that section 174(3) and sections 161, 165 and Rule 44(4) must complement each other so as to promote the purposes of the Ordinance and equally protect and safeguard the rights of both the tax manager and the taxpayer as

envisaged under the Ordinance. Therefore, even though notices under sections 161(1A), 165(2B) and Rule 44(4) have no prescribed period of limitation, the statutory timeframe kicks in the minute the time period under section 174(3) is exhausted rendering such notices ineffective and unenforceable, attracting no penal consequences for the taxpayer. It is clarified that the department is only restricted where it seeks record beyond the statutory period under section 174(3) from the taxpayer but is otherwise free to proceed if the action or proceedings under the Ordinance are based on the record already in possession of the department.

6. We, therefore, endorse the view expressed in *Maple Leaf*<sup>4</sup> by the Lahore High Court, where a similar question had come up before the court. We have also examined *Habib Bank*<sup>5</sup> which holds that the department can override the timeframe under section 174(3) by justifying the delay in initiating the matter against the taxpayer. Section 174(3) of the Ordinance read with Rule 29(4) of the Rules is clear and leaves no room for any such departmental justification, which in any case cannot deprive the taxpayer of the statutory protection under section 174(3) of the Ordinance. We, therefore, do not support the view expressed in *Habib Bank* as we have not been able to find any statutory support for the conclusion arrived at in the said case.

7. It is also useful to draw attention to section 214A of the Ordinance which specifically deals with "condonation of time limit". Perusal of the said provision shows that it applies where there is a time limit provided in the provision, which is not so in the case of sections 161 and 165 of the Ordinance. Further section 214A deals with "any act or thing to be done" within a timeframe. Section 174(3) on the other hand does not require any act or thing to be done in a particular timeframe but quite on the contrary provides that after a lapse of a period of six years, the taxpayer shall not be obligated to maintain its tax records. Therefore, section 214A has no application to the present case and cannot be invoked to deprive the taxpayer of the statutory protection under section 174(3) of the Ordinance.

8. For the above reasons we hold that a taxpayer is obliged to maintain the record under section 174(3) of the Ordinance for a period of six years and the taxpayer cannot be compelled to produce the record for a tax year beyond the period of six years as stipulated in section 174(3) of the Ordinance. Hence notices issued under section 165(2B) or 161(1A) of the Ordinance being ineffective and unenforceable are set aside.

9. For the foregoing reasons, we take no exception to the impugned order. Leave is, therefore, declined and this petition is dismissed.

MWA/C-14/SC Petition dismissed.