IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR
Mr. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITIONS NO.648-L, 649-L and 650-L OF 2021
(Against order dated 26.01.2021 passed by the passed by the Lahore High Court, Lahore in I.T.Rs. No.4919, 4922 and 4923/2021.)

Commissioner Inland Revenue, Zone-II, Regional Tax Office, (RTO) Lahore ... **Petitioner** (in all cases)

vs

Mian Liaqat Ali Proprietor, Liaqat Hospital, House No.6, Street No.6, Lal Pul, Panj Pir Road, Mughalpura, Lahore ... **Respondent** (in all cases)

For the Petitioner : Ch. Muhammad Shakeel, ASC
Mr. Naeem Hassan, Secretary (Litigation), FBR
(in all cases)

For the Respondent : Syed Mansoor Ali Bukhari, ASC
(in all cases)

Date of Hearing : 31.05.2022

ORDER

Munib Akhtar, J.: These matters were disposed of by means of the following short order:

> "We have heard learned counsel for the parties at considerable length and carefully gone through the case record. For reasons to be recorded later, these petitions are converted into appeals and dismissed."

The matters arose under the Income Tax Ordinance, 2001 ("Ordinance"), in relation to the tax years 2016 to 2108 of the same taxpayer (respondent herein). The question of law for the consideration of which the leave petitions were converted into appeals is set out in para 6 below.

2. The respondent filed his returns for the years in question, declaring rental income as well as business income, by way of practicing homeopathic medicine. It appears (though this is not relevant for present purposes) that an audit was conducted for at least one tax year, and the return (deemed assessment order) amended. Thereafter, on or about 12.03.2019, a complaint was received by the concerned income tax authority (being the designated officer of Inland Revenue, herein after "the OIR") that the respondent had underreported (i.e., suppressed or concealed) his sales (and thus business income) from the practice of homeopathy. The OIR initiated enquiries on the complaint in respect of each tax year and on the basis of the details/record obtained concluded that there was "definite information" available within the meaning of s. 122(8) of the Ordinance to warrant amendment of the deemed assessment orders. Accordingly, show cause notices were issued to the respondent on or about 13.11.2019 under s. 122(5) (read with sub-s. (9)). The notices expressly made reference to the definite information that had been acquired by the OIR. Thus, the proceedings so far were entirely within the four corners of s. 122. The importance of this will emerge later.

3. It appears that in the reply submitted to the notices the respondent essentially did not deny the allegations but sought to produce evidence/material as regards the costs (i.e., expenses) incurred for the sales made (but not declared) so that the income chargeable to tax (under the head "income from business") could be properly calculated. The OIR now made a decisive shift in the proceedings. The respondent was intimated that the concealed sales attracted the provisions of s. 111(1)(d) of the Ordinance. It was also stated that the said provision had to be read with s. 39 (which relates to the head "income from other sources") with the result that no deductions in relation to any other head of income was permissible in the computation of income. This meant that the costs and expenses incurred in making the concealed sales (or such of them as would have been permissible deductions under the head "income from business") could not be taken into account. In the event,

specific notices under s. 111(1)(d) were issued on or about 12.12.2019. The respondent was called upon to show cause why, in terms of the said provision, the whole of the concealed sales ought not to be brought to tax. The replies filed by the respondent were found not to be satisfactory and the deemed assessment orders were amended on or about 16.01.2020 in terms of s. 111(1)(d).

4. Being aggrieved by the foregoing, the respondent filed appeals before the CIT (Appeals), which were dismissed by a consolidated order dated 08.06.2020. The respondent took the matter further to the Appellate Tribunal, and there met with success. The learned Tribunal gave a consolidated decision on 08.10.2020. After noting that the respondent had placed before the OIR the costs and expenses incurred in respect of the concealed sales the Tribunal held that the authorities below had erred in concluding that the same were not to be taken into account while computing the amount that could be brought to tax under s. 111(1)(d). The said expenditures were reproduced by the Tribunal in its order and it was thereafter observed as follows (emphasis supplied):

> "It is evident from above that all items of trading/profit accounts were drastically different. *It is however, noted that the OIR was not justified to make addition u/s 111(1)(d) of the ITO, 2001. It is simple proposition that sales of goods invariably involves cost of sales and even gross business income is the difference of sales and cost of sales. The OIR had clear knowledge of sales as well as purchases declared by the appellant through reply. Obviously, Sales were made after having purchased the goods, therefore, treating sales alone as income without considering purchases was illegal and baseless action in the presence of purchases, allegation of suppression of sales was not valid and did not warrant addition u/s 111(1)(d) of ITO, 2001*.
>
> It is also obvious that the taxpayer had suppressed both sales and purchase but it was in fact the difference of sales and purchase (gross profit) which was allegedly concealed for the purposes of charge of income tax. Since Profit & Loss account expenses mentioned in the revised chart (submitted through reply) have been ignored by both the below authorities for the reason that the provisions of section 111of ITO, 2001 are punitive in nature, therefore, no verifiable credit can be given to the appellant, is highly misconceived and misdirected, therefore, in our opinion,

> the actual suppressed income will be the difference of gross profit admittedly, derived by the taxpayer. It is an admitted fact that the taxpayer submitted all relevant documents qua expenses and it is evident that taxpayer explanation was not considered during the proceedings and it is clearly mentioned that explanation must be considered for the action under section 111 of the ITO, 2001 and this procedural lapse does not render the taxpayer punishable. The impugned order is, therefore, modified in so far as addition of concealed income is reduced to RS.5,869,126/-, Rs.4,927,638/- and Rs.4,944,029/- including rental incomes for the tax year 2016, 2017 & 2018 respectively."

5. Being aggrieved by the decision of the learned Tribunal the Commissioner filed tax references before the High Court, which were dismissed by (identical) orders dated 26.01.2021. The learned High Court upheld the reasoning that had found favor with the learned Tribunal. It is against the said orders that the Commissioner sought leave to appeal from this Court.

6. During the course of the hearing it became clear that the leave petitions raised an important question with regard to the proper understanding and application of s. 111(1)(d). After a full hearing the leave petitions were disposed of in terms of the short order noted above, while converting them into appeals to consider the following question of law:

> "Whether, in the facts and circumstances of the case, the Commissioner has properly interpreted and applied s. 111(1)(d) of the Ordinance?"

As is clear from the short order, this question was answered against the Department and in favor of the taxpayer, with the result that the appeals stood dismissed. We now set out the reasons for our decision.

7. Before proceeding further we may note that we are here concerned only with clause (d) of subsection (1) of s. 111. Whether, and if so in what manner and to what extent, the analysis and reasons given herein apply also to the other three clauses of the subsection is left open for consideration in an appropriate case.

8. The answer given to the question posed above requires, for reasons that will become clear, a consideration of s. 122(5)

in addition to s. 111(1)(d). For ease of reference, these provisions are set out below in table form, as applicable over the tax years in question:

Section 111: Unexplained income or assets	**Section 122: Amendment of assessments**
(1) Where — ... (d) any person has concealed income or furnished inaccurate particulars of income including — (i) the suppression of any production, sales or any amount chargeable to tax; or (ii) the suppression of any item of receipt liable to tax in whole or in part, and the person offers no explanation about the nature and source of the ... suppression of any production, sales, any amount chargeable to tax and of any item of receipt liable to tax or the explanation offered by the person is not, in the Commissioner's opinion, satisfactory, the ... suppressed amount of production, sales or any amount chargeable to tax or of any item of receipt liable to tax shall be included in the person's income chargeable to tax under head "Income from Other Sources" to the extent it is not adequately explained.	(5) An assessment order in respect of tax year, or an assessment year, shall only be amended under sub-section (1) and an amended assessment for that year shall only be further amended under sub-section (4) where, on the basis of definite information acquired from an audit or otherwise, the Commissioner is satisfied that— (i) any income chargeable to tax has escaped assessment; or (ii) total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or (iii) any amount under a head of income has been mis-classified.

Two points may be noted. Firstly, in s. 122(5), for the words "definite information acquired from an audit or otherwise" the words "audit or on the basis of definite information" were substituted by the Finance Act, 2020. That change does not apply in relation to the tax years in question in

the facts and circumstances of the case before us but also, in our view, does not in any case have any material bearing on the analysis and reasoning given herein. Secondly, there are also other subsections of s. 122 whereby the deemed assessment order can be amended (or, more precisely, re-amended). While we focus on subsection (5) for analytical purposes, whatever is said herein in relation thereto applies, *mutatis mutandis,* in respect of the other such subsections as well.

9. Before us, learned counsel for the Department focused attention on sub-clause (i) of clause (d) of s. 111(1). The case put forward was that it was this provision that was applied by the OIR (and correctly so) as there had admittedly been suppression (i.e., concealment) of sales by the respondent. Learned counsel for the respondent submitted that the OIR had misconstrued this provision, and the correct approach was that as taken by the learned Tribunal. The submissions became more refined during the course of the hearing and the point in issue boiled down to this: whether the words “chargeable to tax” as used at the end of sub-clause (i) applied only to the phrase immediately preceding it (i.e., “any amount”) or to the whole of the sub-clause, i.e., also to the suppressed production and/or sales? If the former, then the approach taken by the Department was correct; if the latter, then the view taken by the Tribunal was to be preferred. This was so because if the suppressed production or sales were only such as were “chargeable to tax” that could be so only by taking the permissible deductions (by way of expenses and costs incurred) into account. Sales or production, in and of themselves, are not (generally) liable (i.e., chargeable) to tax, except as may otherwise be provided in the 2001 Ordinance (e.g., by way of imposing a “final tax”); such exceptions are legion and, so it sometimes seems, increasing all the time. It is (again, generally) only the “net” amount (i.e., receipts minus costs/expenses) that is chargeable to tax. (The receipts are usually referred to as “gross receipts” or “gross income”.) It is the “net” amount that, looking at the matter conceptually and in terms of the settled principles that underpin income tax law, is regarded as

"income" properly so called, and liable to tax. As noted above, the learned Tribunal took the view that since s. 111(1)(d) was a "punitive" provision it was this approach that was to be taken. On the other hand, if the words "chargeable to tax" did not apply to sales or production, then it was only the "gross" amount thereof that was relevant, and the whole of it could be brought to tax under the head "income from other sources". This was of course the contention of learned counsel for the Department.

10. Clause (d) of s. 111(1) confers a power on the Commissioner to bring to tax unearthed income, i.e., income which was concealed by either suppression of sales or production or any amount chargeable to tax (sub-clause (i)) or suppression of any item of receipt liable to tax, in whole or in part (sub-clause (ii)). Although the word "including" appears to indicate that the two sub-clauses are but particular and non-exhaustive instances of a more general provision (viz., concealment of income or furnishing of inaccurate particulars of income), it is at least arguable that the situations itemized in the sub-clauses are exhaustive. This is so because the concluding part of subsection (1) specifically mentions (insofar as clause (d) is concerned) only the income unearthed from the situations particularized in the sub-clauses as liable to inclusion in the taxpayer's income under the head "income from other sources", and not generally to concealed income or income not declared by reason of furnishing of inaccurate particulars. However, we are, in the facts and circumstances of the present case, concerned with the specific situation contained in sub-clause (i), i.e., suppression of sales and therefore it is not necessary to give a definitive answer to this aspect of clause (d).

11. Having considered the point, we are of the view that there are at least two reasons why the Department's view cannot prevail and the one taken by the Tribunal is to be preferred. Firstly, on the Department's reading of the provision, sub-clause (i) of clause (d) creates two categories: production or sales on the one hand, and "any amount chargeable to tax" on

the other. In respect of the first category it is the "gross receipts" or "gross income" that can, in its entirety, be taxed. In respect of the other, it is only "income" properly so called that can be made liable. Why there should be such a distinction is not readily apparent. It is true that in respect of the interpretation of fiscal statutes the State is given greater latitude in respect of choosing what is to be taxed (or exempted) and if so, in what manner and to what extent. However, this approach is but a rule of interpretation (and one among several) that aids the Court in coming to the correct conclusion with regard to the provision under consideration. It is not an absolute rule, to be applied rigidly and strictly to the exclusion of all else. Production and sales are two types of activity that produce income. However, as is well established, income is a very broad and inclusive concept. In the felicitous words of *Kanga and Palkhiwala*: "The categories of income are never closed" (see *Fawad Ahmad Mukhar and others v Commissioner Inland Revenue and another* 2022 SCMR 426, para 9 and the authorities there cited). To pick out only two types of income (production and sales) and treat those "gross receipts" as liable to tax, out of the vast sea that otherwise constitutes "income" properly so-called ("any amount chargeable to tax") is in our view not the correct approach. No discernable yardstick or standard appears in the provision as would justify such differentiation and radical departure from settled principles of income tax law. Like should (unless otherwise lawfully dictated) be treated alike. If "any amount" can be brought within the scope of sub-clause (i) of clause (d) only if, and to the extent, that it is "chargeable to tax" (i.e., constitutes "income" properly so called), then production and sales must be given the same treatment. Thus, it is only production or sales chargeable to tax that can be brought within the ambit of clause (d). The categorization made by the Department is artificial and cannot be accepted. The approach taken by the learned Tribunal was correct.

12. The second reason why we came to the foregoing conclusion is, perhaps, not so obvious but no less important for

that. It requires a consideration of the power conferred on the Commissioner under s. 122(5), and its comparison with clause (d) of s. 111(1). (Needless to say, the powers of the Commissioner under both provisions are invariably exercised by the OIR.) Looking at s. 122(5) first, this provision enables the OIR to amend the deemed assessment order so as to ensure that the correct amount of tax is levied (and thereafter paid or recovered, as the case may be). Three categories of situations are envisaged. The power to amend can be exercised only if the facts and circumstances of the case come within the scope of any of the three clauses and then also, only (for the tax years in question, in the context of the appeals now before us) if there is "definite information" available. Furthermore, the power to amend can only be exercised within a specified period and not thereafter (which is, broadly speaking, five years as computed within the framework provided by subsections (2) and (4)). The first of the three clauses of subsection (5) provides for the situation where "any income chargeable to tax" has escaped assessment. Quite obviously, what can be brought to tax here is "income" properly so called, and not "gross receipts" or "gross income" as such.

13. Let us now compare the foregoing position with the two sub-clauses of clause (d) of s. 111(1). Both require for there to be "suppression", which would be of production, sales or any amount chargeable to tax in the case of sub-clause (i), and "any item of receipt liable to tax in whole or in part" in the case of sub-clause (ii). Clearly, anything that has been "suppressed" within the meaning of these sub-clauses is income (or leads to income) that has been escaped assessment within the meaning of clause (i) of s. 122(5). Put differently, at first sight it would seem that the situations envisaged in the two sub-clauses of clause (d) of s. 111(1) overlap with, or are equivalent to, the situation envisaged by the first clause of s. 122(5). However, this would not be wholly so in respect of sub-clause (i) of clause (d) on the Department's interpretation. On that approach, other than production or sales, "any amount chargeable to tax" would indeed overlap with "any income chargeable to tax [as] has

escaped assessment". This is so because in both cases, it is the "net" amount, i.e., income properly so called, that would be brought to tax. In respect of production or sales the position would however be different. If s. 122(5) were to be applied it would be only so much of the production or sales as result in a "net" amount, i.e., income properly so called, that would be regarded as having escaped assessment and hence liable to tax. However, if s. 111(1)(d) were to be applied in the manner as understood by the Department it would be the "gross" amount, i.e., the whole of the production or sales suppressed, that could be brought to tax. Clearly, this would not be the same as what is provided by clause (i) of s. 122(5). More precisely, the tax liability determined under the two provisions would be different, and the gap could be quite significant, depending on the facts and circumstances of the case.

14. Now, if we assume for the moment that the Department's approach is correct then for present purposes the crucial point is this. The Ordinance provides no yardstick, guidance, standard or measure when or how, in respect of the same thing (i.e., suppressed or concealed production or sales), it is s. 111(1)(d) that is to be applied or s. 122(5). The matter is left at the unfettered discretion of the OIR. He is the sole judge of whether it is the former or the latter provision that is to be applied. It is his unencumbered wish and choice. But, as just seen, the tax liability is worked out quite differently under the two provisions. It follows that in this scenario the amount of tax with which the taxpayer is to be burdened is entirely at the arbitrary will of the tax authority. And indeed, this is precisely what happened in the present case. As noted above, the OIR (quite correctly) started proceedings under s. 122(5) and (again quite correctly) having gathered the material/record as constituted definite information issued show cause notices in terms of the said provision. But as soon as the taxpayer raised the point of determining the "net" amount, i.e., income properly so called, he pivoted and took off on an entirely different direction. Effectively abandoning s. 122(5), he simply opened proceedings under s. 111(1)(d). There, as per the Department's

interpretation, he was wholly unencumbered with any considerations of determining the "net" amount, and could bring the whole of the "gross receipts" to tax. As found by the learned Tribunal that led to a substantially inflated tax liability for the respondent.

15. The foregoing consequence, which follows necessarily and inevitably from the Department's interpretation inasmuch as it hands an unfettered discretion to the OIR, is not merely startling. It is, in our view, entirely impermissible. This is so because it is contrary to the rule, repeatedly affirmed and applied, laid down by this Court in the leading case of *Waris Meah v The State and another* PLD 1958 SC 157. It is to consider this rule that we must now turn.

16. The dispute in *Waris Meah* arose out of the Foreign Exchange Regulation Act, 1947 ("Act"). At issue was the constitutionality of certain amendments made to the Act, the appellants' case being that the same were violative of the equality provision of the 1956 Constitution (Article 5, which is *in pari materia* the present Article 25). As presently relevant, prior to the said amendments a person guilty of an offence under the Act could be tried under s. 23 thereof (read with the relevant provisions of the Code of Criminal Procedure) only by a court of criminal jurisdiction. Furthermore, the prosecution could only be launched by a person authorized by the Central (i.e., Federal) Government or the State Bank of Pakistan. By the impugned amendments (made in 1956) three new sections were inserted, being ss. 22A, 23A and 23B. On a close examination, the Court discerned the following differences between s. 23 on the one hand and the newly added provisions on the other (pp. 163-4; emphasis supplied):

> "(1) that under section 22A an offender against the Act can only be proceeded against either in a Court under the ordinary law or before a Tribunal under section 23B or before an Adjudication Officer under section 23A ;
>
> (2) that when proceeded against under the ordinary law the sentence on conviction may be that of imprisonment, and if the case is committed to the Court of Session, of fine in any amount ;

(3) that if convicted by the Tribunal, the accused must be awarded a sentence of imprisonment, and the sentence of fine may be in any amount, though there have been no commitment proceedings and the trial has not been held with the aid of a jury or assessors ;

(4) that if the accused is taken before an Adjudication Officer, he cannot be sentenced to imprisonment and the maximum penalty that can be imposed upon him cannot exceed three times the value of the amount involved in the commission of the offence ;

(5) *that whether a person is to be tried under the ordinary law or by a Tribunal or by an Adjudication Officer depends on the will of the Central Government or of the State Bank* ; and

(6) that though the State Bank in the exercise of its functions may under section 25 be controlled by general or special directions of the Central Government, *the Central Government itself has as uncontrolled and unrestricted power to decide how each offender has to be dealt with*."

The challenge to the amendments under Article 5 was sustained in the following terms (pp. 167-8; emphasis supplied):

"... In the present case, the question to be determined is whether the impugned Act is ex facie discriminatory, and we have no hesitation in saying that it is. Three tribunals with different powers and procedures have been set up. *The Act creating them contains no indication as to which class or classes of cases are to go before a Court and which before the Tribunal and the Adjudication Officer and it does not impose upon the Central Government, the obligation, or expressly confer on it the power, of making rules with a view to classifying the cases to be tried by each of these tribunals. Nor does it define the principle or policy on which such classification may be made by the Central Government or the State Bank*. The Central Government has not exercised its power of issuing any directions to the State Bank or of making any rules under section 27 for carrying into effect the provisions of the Act. *The result, therefore, is that in the present state of the law no person who is alleged to have contravened any provision of the Act can know by which Court he is to be tried, and the question whether on conviction he shall be punished with imprisonment or should be punished with imprisonment and fine which may extend to any amount, or whether he should be let off with a mere penalty of three times the value of the amount involved rests entirely on the action that the Central Government or the State Bank may choose to take*.

It was contended on behalf of the State that in the present cases, it could not be said that discretion had not been exercised in a fair and reasonable manner by the State Bank, in electing to send the cases to a Tribunal. On the allegations, the cases were of a serious character, and merited severe punishment. The mischief of the Act is, however, not susceptible of so simple a cure. *It confers discretion of a very wide character upon stated authorities, to act in relation to subjects falling within the same class in three different modes varying greatly in severity. By furnishing no guidance whatsoever in regard to the exercise of this discretion, the Act, on the one hand, leaves the subject, falling within its provisions, at the mercy of the arbitrary will of such authority*, and, on the other, prevents him from invoking his fundamental right to equality of treatment under the Constitution.

The Constitution declares in Article 5 (1) that "All citizens are equal before law and are entitled to equal protection of law" and Article 4 (1) provides that "Any existing law . . . . . in so far as it is inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void." That duty of declaring that a law is void, for violating a Fundamental Right defined in Part II rests on the Courts. *That duty cannot be performed, so as to ensure that a law operates equally in relation to all persons within its mischief, if the law itself provides for differential operation in relation to such persons, not in accordance with any principle expressed or implicit in the law, not on the basis of any classification made by or under the law, but according to the unfettered discretion of one or more statutory authorities*.

Here, not only is there discretion in the specified authorities whether they will proceed at all against any member of the class concerned, viz. offenders against the Act, but there is also an unfettered choice to pursue the offence in any one of three different modes which vary greatly in relation to the opportunity allowed to the alleged offender to clear himself, as well as to the quantum and nature of the penalty which he may incur. *The scope of the unguided discretion so allowed is too great to permit of application of the principle that equality is not infringed by the mere conferment of unguided power, but only by its arbitrary exercise. For, in the absence of any discernible principle guiding the choice of forum, among the three provided by the law, the choice must always be, in the judicial viewpoint, arbitrary to a greater or less degree. The Act, as it is framed, makes provision for discrimination between persons falling, qua its terms, in the same class, and it does so in such manner as to render it impossible for the Courts to determine, in a particular case, whether it is being applied with strict regard to the requirements of Article 5 (1) of the Constitution*."

The appeals were accordingly allowed and the convictions and sentences set aside.

17. *Waris Meah*, and another decision rendered sometime earlier and relied upon (at pp. 166-7), *Jibendra Kishore Achharya Chowdhury v Province of East Pakistan* PLD 1957 SC 9, continue to constitute in many important respects the bedrock on which the equality jurisprudence rests. In our view, the principles laid down in *Waris Meah* apply fully to the provisions now under consideration. This is especially so if the Department's approach and interpretation were correct. An untrammeled discretion is conferred on the tax authorities, without any guidance, yardstick, measure or standard for applying either of two provisions, which result in different (and possibly hugely variant, as is the situation in the cases at hand) tax liabilities being thrust upon and incurred by the taxpayer. Different taxpayers, or even the same taxpayer in respect of different tax years, may be treated either under the one or the other provision with divergent obligations to pay tax, even though the position may essentially be the same. And this result may be brought about even by the same OIR. As held in *Waris Meah*, the taxpayer may be treated with greater or lesser severity, all at the sweet will, unencumbered discretion and unguided choice of the tax authorities. On the other hand, if the view that prevailed with the learned Tribunal is accepted, then the differential disappears. Both under s. 122(5) and s. 111(1)(d), the taxpayer is exposed to the same tax liability in respect of the income that has escaped assessment, or been suppressed, i.e., he is liable to tax on the "net" amount, or "income" properly so called. The Department's interpretation is therefore not sustainable, being contrary to settled principles established by the jurisprudence of this Court. This is the second reason why we came to the conclusion as noted above.

18. This does not however quite end the matter. Simply by holding, as we do, that sub-clause (i) of clause (d) is to be interpreted and applied in the manner as indicated does not fully close the divergence or "gap" between s. 122(5) and s. 111(1) in the context of the principles enunciated in *Waris*

Meah. For one thing, there continues to be a complete lack of guidance or any standard by which the OIR is to be guided as to which of the two provisions is to be applied, and in what circumstances. Thus, at a basic level the inconsistency with *Waris Meah* remains. This can potentially have serious consequences. For example, as noted above, while there is a five year time limit within which an assessment order can be amended under s. 122(5), there now appears to be no such constraint in respect of s. 111(1)(d). (We may note that earlier, subsection (4)(b) of s. 111 had provided for a time limit of five years. However, this clause was omitted by the Finance Act, 2010.) This situation, detrimental to the taxpayers, cannot remain unaddressed if at all, as they must, the two provisions are to be applied in a manner consistent with *Waris Meah*.

19. In order therefore to further align the two provisions more closely with *Waris Meah*, we hereby direct the Federal Board of Revenue, in exercise of its powers under the Ordinance (whether under s. 206 and/or s. 237 or any other enabling provision), to forthwith issue appropriate guidance and provide the necessary yardstick, measure, guidelines and standard to the tax authorities, consistently with this judgment, *inter alia* as to when and how, and in which circumstances and against what taxpayers, action can be initiated under the first clause of s. 122(5) on the one hand, or the two sub-clauses of clause (d) of s. 111(1) on the other. In issuing such guidelines, the FBR must take into account, and appropriately incorporate therein, the following points:

a. If the tax authorities intend to take action against a person within the time period permissible under s. 122, then such action must ordinarily be taken in terms of subsection (5) (or any other applicable subsection, as the case may be) thereof and in a manner compliant therewith, rather than under s. 111(1)(d). If at all during the said period the OIR nonetheless intends to proceed under the latter provision then clear reasons must be given why this is being done.

b. If the tax authorities intend to take action under s. 111(1)(d) against a person beyond or after the time period stipulated under s. 122, and the taxpayer shows that the information on which such action is based was, or ought reasonably to be regarded either as being or such as could have been, in the knowledge of the tax authorities within the said time period, then the tax authorities will have to give reasons as to why action was not taken under s. 122.

It may be noted, as to point (a) above, and in respect of the reasons to be given, that the onus will lie on the tax authorities to justify such action and the threshold will be a high one. Furthermore, the reasons will be subject to judicial scrutiny in terms, *inter alia*, of the hierarchy of remedies provided by and under the Ordinance. As regards point (b) (the purpose of which is to prevent the tax authorities from, as it were, simply running down the clock), the reasons to be given by the OIR if the taxpayer meets the initial burden cast upon him will be subject to judicial scrutiny in terms as just stated.

20. The Office is directed to transmit a copy of this judgment to the Chairman, FBR to ensure compliance. The foregoing are the reasons for which the appeals were dismissed.

Judge

Judge

Judge

Islamabad, the
31st May, 2022
Naveed/* Approved for reporting