APPELLATE TRIBUNAL INLAND REVENUE, MULTAN BENCH, MULTAN

ITA No.324/MB/2025
(Tax Year 2020)

Mr. Umar Qadoos, Sahiwal.
Reg: 3650202913709 **...Appellant**

Versus

The CIR, RTO, Sahiwal. **...Respondent**

Appellant by: **Mr. M. Imran Ghazi, Advocate.**
Respondent by: **Mr. M. Akhtar Suraj, DR.**

ITA No.221/MB/2025
(Tax Year 2020)

The CIR, RTO, Sahiwal. **...Appellant**

Versus

Mr. Umar Qadoos, Sahiwal.
Reg: 3650202913709 **...Respondent**

Appellant by: **Mr. M. Akhtar Suraj, DR.**
Respondent by: **Mr. M. Imran Ghazi, Advocate.**

Date of hearing: **18.12.2025**
Date of order: **05.01.2026**

O R D E R

MUHAMMAD NAEEM MUNAWAR (MEMBER): This consolidated order shall dispose of the captioned cross-appeals, one filed by the taxpayer and the other by the Department, arising out of the order dated 21.03.2025 passed by the learned Commissioner Inland Revenue (Appeals), Sahiwal, against the assessment order dated 28.10.2024 passed by the learned Additional Commissioner Inland Revenue, Range Sahiwal under section 122(5A) of the Income Tax Ordinance, 2001 ["the Ordinance"], for Tax Year 2020.

2. Briefly stated, the taxpayer (an Individual) filed a return of income for Tax Year 2020 on 13.03.2021, declaring the total income of Rs.750,000/- along with a wealth statement as on 30.06.2020 showing total assets of Rs.40,748,217/-. In the wealth reconciliation, the taxpayer declared Rs.27,000,000/- as "gift". The assessing officer formed the view that the declared gift did not qualify for immunity/exemption for want of evidence and, specifically, because it was stated to have been received otherwise than through a banking channel. A show cause notice was issued under section 122(5A), read with section 122(9), proposing an addition under section 111(1)(b) read with section 39 of the Ordinance. In response, the taxpayer explained that the amount of Rs.27,000,000/- was received as a gift from his real father, Muhammad Ashraf, for the purchase of an immovable property, and that the donor had ample resources and had declared the transaction in his own tax record/wealth statement. The assessing officer, however, concluded that the gift was received in cash, therefore hit by section 39(3), and proceeded to amend the deemed assessment under section 122(5A) by making an addition of Rs.27,000,000/- under the head "Income from Other Sources" vide order dated 28.10.2024.

3. The taxpayer being aggrieved carried the matter before the learned CIR(A), pleading, inter alia, that donor and donee were blood relatives (father and son), the source/capacity stood explained through the donor's sale of property and tax record, and section 39(3) should not be applied mechanically in gifts between close relatives. The learned CIR(A), while observing that the taxpayer had provided the source, held that the taxpayer failed to show receipt through the banking channel and also failed to furnish any superior-court judgment establishing that section 39(3) was inapplicable to blood relations; hence, the addition was maintained/confirmed.

4. The taxpayer, through grounds of appeal and written arguments, assailed the confirmation of addition before this Tribunal, primarily contending that the identity, genuineness and source stood explained; the donor's wealth statement shows outflow of Rs.27,000,000/- and the

taxpayer's wealth statement shows inflow of the same; and that the statutory exception/benefit for gifts from "relatives" under section 39(1)(la) (read with section 85(5)) relaxes the strict rigour of section 39(3), as also recognized by the Lahore High Court (Multan Bench) in 2025 LHC 6840 (CIR v. Muhammad Kashif).

5. The Department, through its grounds, assailed the learned CIR(A)'s observations regarding "source explained" and argued, inter alia, that the sale proceeds were allegedly received substantially in Tax Year 2021 (as per Department, Rs.31,302,500/- received on 01.01.2021), hence could not fund a gift "received" in Tax Year 2020; the learned CIR(A) accepted/evaluated evidence allegedly not produced before the assessing officer without meeting the requirement of section 128(5); and the appellate order is non-speaking and not in line with section 24-A of the General Clauses Act, 1897.

6. Learned AR, while arguing his appeal, reiterated that the gift was from father to son and the donor's resources/capacity were demonstrable through disposal of immovable property. Further submitted that the donor's tax proceedings on the sale were dropped after submission of evidence; and the donor's and donee's wealth statements correspondingly reflect outflow/inflow of Rs.27,000,000/-. It was further argued that even if the gift was not routed through banking channel, it is not per se taxable in view of section 39(1)(la) and the ratio laid down by the Lahore High Court, Multan Bench, requiring a fact-based inquiry rather than an automatic addition.

7. Learned DR, on the other hand, supported the orders of the authorities below to the extent adverse to the taxpayer and emphasized that section 39(3) prescribes banking-channel conditionalities. He submitted that the taxpayer's own record before the assessing officer reflected receipt "in cash"; and further there is a timing mismatch in sale proceeds vis-à-vis the year of receipt of gift; and the learned CIR(A) neither recorded "sufficient cause" nor followed the statutory

discipline of section 128(5) while dealing with additional material, besides not returning clear findings on crucial dates and receipts.

8. We have heard both the learned representatives and have perused the record, the impugned orders, grounds of appeal, and the written arguments. The sole controversy is whether the declared gift of Rs.27,000,000/- received from the taxpayer's father can be treated as taxable merely because it is alleged to have been received otherwise than through banking channel, notwithstanding that the donor is a "relative" within section 85(5), the donor has declared the corresponding outflow in his wealth statement and has sworn affidavit, and the donor's source/capacity has already been examined by the Department in his own proceedings which were dropped.

9. The Hon'ble Lahore High Court (Multan Bench), while examining gifts between prescribed relations and the impact of clause (la) of section 39(1) (inserted through Finance Act, 2019), has held that the amendment gives statutory recognition to the special treatment earlier extended by Courts/Tribunals to gifts between spouses/parents and children, and that it creates an exception in the context of gifts received from prescribed relatives. The Hon'ble Court further held that clause (la), being procedural/machinery and beneficial, can be read retrospectively, including for Tax Year 2020, but the transaction must still be factually established as a genuine gift and remains subject to scrutiny. Relevant excerpts from the judgments are as follows: -

> "4. Notably, one of the Reference applications bearing I.T.R No.49/2022, which arose out of ITR No.60/MB/2020, relates to Tax year 2020, and preceded amendment made in section 39(l) of the Ordinance by virtue of Finance Act 2019, whereby clause (la) was inserted and it reads as;
>
> ***"subject to sub-section (3), any amount or fair market value of any property received without consideration or received as gift, other than gift received from relative as defined in sub-section (5) of section 85.***

5. Fundamental issue is whether classification and taxability of alleged transaction of gift would be determined on the basis of factual explanation(s) offered by the taxpayer **or** the Ordinance, in terms of section 39(3) thereof, had predetermined the taxability of non-compliant gift(s) as income from other source(s). We are dealing with machinery provision and not a charging one - Section 39 of the Ordinance.

There is no cavil that what constitutes an income; manner of categorization of income and conditionalities to be met for determining the taxability of transaction of gift are determinable under statutory dispensation – Income Tax Ordinance 2001, in present context. Section 39(3) of the Ordinance prescribes that the amounts received as gift(s), otherwise than by a crossed cheque drawn on a bank or through banking channel, are per se taxable as income from other sources. Statutory conditions always determine the taxability of transaction, either as income or otherwise. And taxpayer was not the arbiter of such determination. Courts/tribunals have always treated statutory characterization of transaction(s) by law as conclusive and final. Notwithstanding, these settled principles, governing the gift(s), conventionally our courts had extended benefit of convenience to the transactions of gift, between spouses and parents/children, rather a special treatment, i.e., an exception to the otherwise regimented classification of transaction of gift under section 39(3) of the Ordinance – conventional wisdom was based on the presumption that gift by a husband to wife is not and cannot always be routed through the banking channel – [and if letter of the law is strictly applied then every obligation of dower gift in shape of cash, has to be performed through the banking channel]. Context of the gift between prescribed relations, for the purposes of present enactment, is a relevant and crucial fact. Cultural set-up, social norms, dwindling literacy ratios and limited familiarity or ease with banking procedures are few factors that led to the concessions extended vis-à-vis gifts between spouses – only concession extended was that notwithstanding non-compliant to the conditionalities of section 39(3) of the Ordinance, transaction was treated as gift, which certainly was subjected to review/scrutiny.

6. Evidently, the benefit(s) extended by the courts/tribunals, in lieu of gifts exchanged between spouses was granted statutory recognition by legislature upon addition of clause (la) to section 39(1) of the Ordinance – scope of relatives was extended in terms of subsection (5) of section 85 of the Ordinance. This statutory recognition, vis-à-vis and to the extent of receiving gifts from certain classes of relatives, has created an exception to mechanism provided for qualifying gifts under section 39(3) of the Ordinance, whereby statutory classification of gift, subject to the manner of performance, was conclusively determined. After

introduction of clause (la) of section 39(1) of the Ordinance, an exception/nonconformity has been created in context of receiving of gifts from the relations prescribed. For the purposes of clarity, clause (la) of section 39(1) of the Ordinance has changed position qua classification of gift, from statutory classification to factual classification - [opportunity extended to the taxpayer to establish factum of gift, between permitted relations, outside the banking channel]. Pertinently mentioned, gifts outside the circle of relatives, defined in sub-section (5) of section 85 of the Ordinance, are and would continue to be subjected to the conditionalities prescribed in section 39(3) of the Ordinance.

7. Now the question is what is the scope of the amendment, by way of clause (la) of Section 39(1) of the Ordinance, brought through Finance Act 2019 [applicable from 1st July 2019], and whether same can be read retrospectively?

Section 39(3) of the Ordinance and exception created by virtue of clause (la) of section 39(1) of the Ordinance fall within the category of machinery provision(s) – providing for assessment of tax -, and especially the latter one being beneficial, hence, has to be construed accordingly. There is no cavil that retrospective effect could be extended to machinery provisions, where context and legislative intent so permit. Additionally, provisions under reference are procedural in scope and effect, which provides a mechanism for determining the liability and not creating liability.....

8. There is no cavil that clause (la) of section 39(1) of the Ordinance, upon purposive interpretation, intended redressal of mischief – difficulty encountered in context of gifts received from parents or between spouses. This brings amendment within the scope of a remedial statutes. Ordinarily, section 39(3) of the Ordinance prescribes mechanism for effecting gifts, for the purposes of Ordinance, and clause (la) of section 39(1) of the Ordinance creates an exception – [that is the only purpose intended to be achieved otherwise there was no occasion for providing exclusion through clause (la) of section 39(1) of the Ordinance].

Is there any prejudice caused by expanding the effect of clause (la) of section 39(1) of the Ordinance, retrospectively. We see no prejudice being caused by reading clause (la) of section 39(1) of the Ordinance, in the context of gifts received from relatives, explained in sub-section (5) of section 85 of the Ordinance, retrospectively. Extending retrospective effect to clause (la) of section 39(1) of the Ordinance would neither suggest nor imply that mere assertion on the part of taxpayer or inclusion of any amount as gift in declaration / return of income would absolve the taxpayer, or for that matter the donor,

collaterally, – within the sphere of relatives explained in subsection (5) of section 85 of the Ordinance – from otherwise substantiating factum/transaction of gift, legality thereof and otherwise its genuineness. Whether amount(s) received is a gift or income, it still depends upon the factual characterization of the transaction, subject to inquiry conducted under assessment-review jurisdiction – Assessing officer would still be competent to recharacterize transaction if gift, outside banking channel, as income if same was not proved / substantiated. There is no escape from a fact-based inquiry, to be undertaken by the department to determine that whether transaction claimed is a gift or not?

9. We, therefore, dismiss the argument that gifts between the prescribed relations, defined in clause (la) of section 39(1) of the Ordinance, would per se be treated or taxable as income from other sources and add a caveat that gift(s) claimed in the context of amended clause would still be subject to inquiry/scrutiny and upon being unsatisfied, Assessing officer is competent to re-characterize receipt of amount as income, instead of gift."

10. In the present case, the relationship (father and son) is admitted. The taxpayer has produced a coherent and matching disclosure: the father's wealth statement shows outflow of Rs.27,000,000/- as a gift, and the son's wealth statement shows inflow of Rs.27,000,000/- as a gift. The donor has further sworn an affidavit owning the gift. Moreover, it is not disputed that the Department initiated proceedings in the donor's case to probe the disposal/sale proceeds/capital-gain aspect and dropped those proceedings after considering the donor's explanation and documentary trail. This conduct of the Department is a strong corroborative circumstance that the donor had the requisite capacity/resources and that the source narrative was found acceptable at the donor's end.

11. In these circumstances, the addition has been sustained essentially on a hyper-technical premise, i.e., that the gift was "in cash" and therefore automatically taxable. However, the Hon'ble Lahore High Court (as referred above) has expressly rejected the proposition that gifts between prescribed relations would per se be treated as taxable income merely for being outside the banking channel; rather, the

determining factor is factual substantiation of the gift and its genuineness. Here, the transaction is not a bare assertion. It is supported by reciprocal wealth disclosures (donor and donee), an affidavit, and the Department's own prior scrutiny and dropping of proceedings in the donor's case, which reinforces the capacity and availability of funds. No adverse material has been brought on record to rebut the donor's capacity or to show that the declared gift was, in fact, the taxpayer's concealed income. Once such primary onus stands discharged through credible documentation, the burden shifts, and in the absence of any contrary evidence, the addition under section 111(1)(b) read with section 39 cannot be sustained.

12. As regards the Department's plea that it may have credible information about insufficiency of donor's sources, the law provides an adequate mechanism. If the Department possesses any further tangible material suggesting that the donor lacked resources or that the donor's declaration is false, it may proceed in accordance with the law in the donor's case under the relevant provisions. This, however, cannot justify maintaining an addition in the donee's hands where the gift is otherwise established on record, and the donor's capacity has already been examined and accepted by dropping proceedings.

13. For the foregoing reasons, the taxpayer's appeal is allowed, and the Department's appeal is dismissed. Consequently, the addition of Rs.27,000,000/- made/confirmed under section 111(1)(b) read with section 39 of the Ordinance is deleted. The impugned order of the learned CIR(A) dated 21.03.2025 and the assessment order dated 28.10.2024 are annulled to the extent inconsistent with this decision. We order accordingly.

SEAL OF APPELLATE TRIBUNAL INLAND REVENUE GOVT. OF PAKISTAN MULTAN

(MUHAMMAD NAEEM MUNAWAR)
Member

ABDUL BASIT)
Member