

APPELLATE TRIBUNAL INLAND REVENUE PESHAWAR BENCH**PESHAWAR***(Special Division Bench)***ITA No.147/PB/2025****MA(Condone) No.67/PB/2025****MA(Stay) No.165/PB/2025***(Tax Year-2017)*

Hazrat Wali S/o Khattak Khan
 R/o Khana Parachinar Boshera
 Tehsil & District Khurram
 Agency.

Versus***....Appellant.******....Respondent.***

The Commissioner-IR (Peshawar
 Zone), RTO, Peshawar.



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Appellant by : Syed Shams-Ul-Islam, Advocate.
Respondent by : Syed Roman Ali Shah, DR.

Date of Hearing : 06.10.2025.

Date of Order : 06.10.2025.

ORDER

M. M. AKRAM, JUDICIAL MEMBER:- Through the instant appeal, along with Miscellaneous Applications for condonation of delay and grant of stay, the appellant taxpayer has assailed the impugned Order No. 1573 dated 26.02.2024, passed by the learned Commissioner Inland Revenue (Appeals), Peshawar [CIR(A)], whereby the appeal of the appellant was rejected.

2. The brief facts leading to the present appeal are that the appellant, an individual taxpayer, was identified based on definite information regarding the purchase of immovable property and payment of tax under Section 236K of the Income Tax Ordinance, 2001 ("the Ordinance"). Consequently, the Assessing Officer issued notices under Sections 122(9) and 111(1)(b) of the Ordinance, calling upon the appellant to explain the source of investment and provide supporting evidence. However, due to non-compliance with the statutory notices, the assessment proceedings

were finalized ex parte under Section 121(1) of the Ordinance. The Assessing Officer assessed the total taxable income at Rs. 51,510,000/-, determining a tax liability of Rs. 17,248,000/-.

3. Aggrieved by the said assessment, the appellant preferred an appeal before the learned Commissioner Inland Revenue (Appeals), Peshawar. The CIR(A), however, rejected the appeal, upholding the action of the Assessing Officer. Dissatisfied with the said treatment, the appellant has filed the present appeal, along with the accompanying Miscellaneous Applications for Condonation of Delay and Stay, to contest the legality and validity of the impugned orders, raising various grounds detailed in the memo of appeal and the said applications.



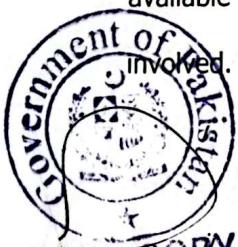
TRUE COPY The appeal and the Miscellaneous Applications were fixed for hearing on 06.10.2025. On the date of the hearing, Syed Shams-ul-Islam, Advocate/Authorized Representative, appeared on behalf of the appellant taxpayer and advanced detailed arguments, while Syed Roman Ali Shah, the learned Departmental Representative (DR), appeared for the respondent department and supported the impugned orders.

5. The learned AR for the appellant contended that the impugned appellate order was never properly served upon the appellant as required under Section 218 of the Ordinance, and that the appellant first became aware of the order only upon receipt of a recovery notice from the department. Upon obtaining a certified copy of the order, the appeal was filed promptly, well within the period of limitation reckoned from the date of actual knowledge. In support of this contention, reliance was placed on judgments of this Tribunal wherein, according to him, similar situations

were adjudicated in favor of taxpayers. The learned AR further submitted that both the authorities below failed to consider the material evidence and documents that were duly submitted along with the appeal before the CIR(A). It was asserted that both the assessment and appellate orders were passed *ex parte*, thereby depriving the appellant of the opportunity to be heard and resulting in a violation of the principles of natural justice.

6. Conversely, the learned DR defended the orders passed by the authorities below, maintaining that repeated opportunities were provided to the appellant, who remained non-compliant and failed to appear or produce the required information.

7. We have carefully considered the rival submissions, examined the available record, and deliberated upon the legal and factual issues involved. Two distinct questions arise for determination:



Whether the appeal before this Tribunal is barred by limitation, and if so, whether sufficient cause has been shown to condone the delay; and

Whether the impugned orders passed by the authorities below suffer from any legal infirmity or violation of the principles of natural justice warranting interference by this Tribunal.

With respect to the first question, the appellant's plea that the impugned order was not duly served as per the procedure prescribed under Section 218 of the Ordinance merits consideration. The record does not contain conclusive evidence demonstrating proper and effective service of the appellate order upon the appellant. The appellant's explanation that knowledge of the order was first gained upon receipt of a recovery notice appears plausible and has not been rebutted by the department with any contrary evidence. The settled law, as reiterated in numerous precedents, is that limitation begins to run only from the date the party gains

knowledge of the order when service is defective or irregular. The appellant filed the appeal promptly upon obtaining a certified copy of the order; hence, the delay, if any, is satisfactorily explained and does not appear to be deliberate or mala fide. Accordingly, the application for condonation of delay is accepted, and the appeal is treated as having been filed within the prescribed time.

8. Turning to the merits of the case, it is evident that both the Assessing Officer and the first appellate authority proceeded to decide the matter ex parte without effectively examining the documents now produced by the appellant. The record reveals that the appellant was not provided a fair and meaningful opportunity to substantiate the sources of investment or to explain the nature of property transactions. The learned CIR(A) also failed to consider the evidentiary material annexed with the appeal and summarily upheld the assessment order without recording independent reasoning or addressing the appellant's contentions. The right to be heard is a fundamental facet of due process, and any order passed in violation of this right stands vitiated in law. The purpose of assessment proceedings under the Ordinance is not merely to raise tax demands but to ascertain the correct taxable income through due inquiry, objective evaluation, and reasoned judgment. In the present case, since material documents and explanations offered by the appellant have not been duly evaluated, and both orders suffer from procedural irregularities, we find it appropriate to remand the matter for de novo consideration by the Assessing Officer.



9. Accordingly, the impugned order of the learned Commissioner Inland Revenue (Appeals), Peshawar, as well as the underlying assessment order, are set aside, and the case is remanded to the Assessing Officer with the following specific directions:

- i. *The Assessing Officer shall afford the appellant taxpayer a fair and adequate opportunity of being heard and to produce all relevant documentary evidence, including proof of property transactions, banking records, and the source of investment.*
- ii. *The Assessing Officer shall examine the evidence objectively, record specific findings on each issue, and pass a speaking and reasoned order strictly in accordance with law.*
- iii. *The appellant taxpayer is directed to cooperate fully with the Assessing Officer and ensure submission of all requisite information within the time prescribed, failing which the officer shall be at liberty to proceed in accordance with law.*
- iv. *The remand proceedings shall be concluded within ninety (90) days from the date of receipt of this order to ensure expeditious disposal.*



10. In view of the foregoing discussion, the Miscellaneous Application for Condonation of Delay is accepted, and the appeal is allowed. The case is remanded to the Assessing Officer for *de novo* adjudication in accordance with the directions contained hereinabove. Consequently, the Miscellaneous Application for Stay also stands disposed of in the same terms.

(M. M. AKRAM)
JUDICIAL MEMBER

(M. ABDULLAH KHAN KAKAR)
MEMBER

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