Form No: HCJD/C-121.

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

I.T.R. No.253 of 2010

Commissioner Inland Revenue, Legal, LTU, Islamabad.
Vs.
M/s Askari Cement Ltd.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.02.2025	**Barrister Atif Rahim Burki, Advocate for applicant.** **Hafiz Muhammad Idris and Syed Farid Ahmed Bukhari, Advocates for respondents.**

Babar Sattar, J.- This reference has emanated from the order of the Appellate Tribunal Inland Revenue **("Tribunal")** dated 08.10.2009.

2. The sole question before this Court is whether the calculation of the limitation period for purposes of Section 66(1)(c) of the Income Tax Ordinance, 1979 **("Income Tax Ordinance")** was correctly calculated by Commissioner (Appeals), which order was then upheld by the Tribunal.

3. Learned counsel for the tax department submitted that the question of law related to the application of period of limitation under section 66(1)(c) of the Income Tax Ordinance. He submitted that there were two rounds of litigation in the present matter. During the first round, Commissioner (Appeals) as well as the Tribunal remanded the matter back to the assessing officer. After the reassessment, the matter went to

Commissioner (Appeals) who deleted the demand generated on the basis of depreciation on the ground of limitation i.e. that the reassessment order had been passed beyond the period of limitation prescribed under section 66(1)(c) of the Income Tax Ordinance. He submitted that the Commissioner (Appeals) had mistakenly treated the date of the first remand order passed by the Commissioner (Appeals) on 29.07.2005 as the trigger date as opposed to the date of the Tribunal's order dated 05.10.2007. He submitted that if the date of the Tribunal's order was considered, the reassessment order was passed on 30.06.2008 and was within a period of one year from the date of the remand order passed by the Tribunal and was therefore within time.

4. Learned counsel for the taxpayer says that the Tribunal has merely relied on the findings of the Commissioner (Appeals), but he acknowledged that the matter had not been decided by Commissioner (Appeals) on its merits.

5. We agree with the contentions made by the learned counsel for the Tax Department. It appears that during the first round of litigation, the assessment order was challenged before Commissioner (Appeals), who by order dated 29.07.2005, remanded the matter back to the

Commissioner for reconsideration on certain grounds. The said order was then appealed by both the Tax Department and the Taxpayer, which appeal was decided by the Tribunal on 05.10.2007. It was on the basis of the order of the Tribunal that a re-assessment order was passed on 30.06.2008. However, instead of calculating the limitation period for purposes of Section 66(1) of the Income Tax Ordinance, from the date of the order of the Tribunal, i.e., 05.10.2007, the Commissioner (Appeals) erroneously calculated the limitation period from the date of the first remand order made by Commissioner (Appeals), i.e., 29.07.2005, and thus came to the conclusion that the re-assessment order had been passed beyond the period of limitation. Had he calculated the time period for passing the re-assessment order from the date of the order of the Tribunal, it would emerge that the re-assessment order was within time, and consequently, the appeal ought to have been decided by Commissioner (Appeals) on merits.

6. We therefore ***set-aside*** the order of Commissioner (Appeals) dated 03.12.2008, as well as the order of the Tribunal dated 08.10.2009, and remand the matter back to Commissioner (Appeals)

to be decided on merits, assuming that the appeal had been brought before him/her within time.

7. ***Disposed of*** accordingly. Let a copy of this order be sent to the Registrar of the learned Tribunal under the seal of this Court.

(BABAR SATTAR)
JUDGE

(SAMAN RAFAT IMTIAZ)
JUDGE

Asif Mughal