

IN THE HIGH COURT OF SINDH AT KARACHI.

Present:

Justice Mohammad Abdur Rahman

Justice Dr. Shah Nawaz Memon.

Income Tax Reference Applications No. 432 to 435 of 2024.

The Commissioner I.R Vs. M/s GE Vernova International LLC

Date of hearing 23.09.2026.

Date of judgment 25.09.2026.

Applicant Through Mr. Mukesh Kumar Khatri, Advocate.

Respondent Through Mr. Yousuf Khalid Anwer, Advocate.

JUDGMENT

Dr. Shah Nawaz Memon-J.:- These four Income Tax Reference Applications have been filed by the Commissioner Inland Revenue, Zone-II, Large Taxpayers Office, Karachi under section 133 of the Income Tax Ordinance, 2001 (“the Ordinance”). They arise from a common order dated 23.08.2024 passed by the learned Appellate Tribunal Inland Revenue, Division Bench-IV, Karachi (“the Tribunal”) in ITA Nos. 1210, 1211, 1213 and 1214/KB/2024, relating to tax years 2019, 2020, 2022 and 2023. The same question is proposed in each reference, and they are decided together by this judgment.

I. FACTS OF THE CASE

2. The respondent is of GE Vernova International LLC, formerly General Electric International Inc. (“GEI USA”), a company incorporated in the State of Delaware, United States of America and which operates in Pakistan through a Branch Office. The branch office provides operation and maintenance, periodic inspection and overhaul services to power plants in Pakistan, together with the supply of parts.

- It is common ground that the branch is a permanent establishment in Pakistan of a non-resident person and that its income is chargeable to tax under the head “Income from Business”.
3. The returns filed by the respondent for the four tax years were treated as assessment orders under section 120 of the Ordinance. They were later amended by the learned Additional Commissioner Inland Revenue under section 122(5A) through orders passed in May and June 2024. One of the matters taken up was the deduction of the payment of royalty as an expense. The Additional Commissioner found that it comprised two elements, a technical licensing fee and a monogram fee. The technical licensing fee was allowed, the officer observing that it was not paid to the head office of the branch. The monogram fee was disallowed under section 105(1)(c) of the Ordinance in the following amounts:

Tax Year	Monogram fee disallowed (Rs.)
2019	92,291,754
2020	105,134,433
2022	277,773,367
2023	171,170,504

4. The reasoning in the order for tax year 2019, which is representative, was that the monogram fee was in substance a fee for the use of the “General Electric” logo; that “General Electric in Pakistan is branch of General Electric Company itself”, so that the company had in effect paid royalty to itself for the use of its own trade mark; and that the arrangement formed part of a profit shifting scheme. The deduction was accordingly held to be barred by section 105(1)(c).
5. Before the Tribunal, the respondent’s case was that the monogram fee was charged not by its head office but by General Electric Company (“GEC”), a different legal entity,

under a trademark, trade name and related agreement dated 01.01.2013 read with a distribution, assumption and novation agreement dated 29.11.2016. Reliance was placed on the related party notes in the audited financial statements for each year, which identify GEC as the payee, and on the separate filings made by GEII USA and GEC before the United States Securities and Exchange Commission. The Tribunal noted that this stance had been placed before the Additional Commissioner, who had made the addition without addressing it, although the Commissioner Inland Revenue (Appeals) had in an earlier round directed that very point to be examined. The Tribunal then recorded:

“... Hence, in view of above, it transpires that the Appellant’s arrangement in respect of the monogram fee/royalty is with GEC (a separate legal entity) and not the head office of the appellant GE Verona Intt Inc USA (GEII). Hence, the ACIR’s action of disallowing the royalty in terms of section 105 (1) (c) of the Ordinance is deleted.”

II. THE QUESTION PROPOSED

6. The following question is proposed in each reference:

“Whether under the facts and circumstances of the case, learned Appellate Tribunal Inland Revenue (ATIR), Karachi was justified to allow deduction on account of monogram fee / royalty paid despite the fact that section 105(1)(c) of the Income Tax Ordinance, 2001 does not allow any deduction paid or payable by the Permanent Establishment (P.E) of non-resident other than towards reimbursement of actual expenses incurred by the non-resident person to third party?”

7. As drafted, the question assumes that the monogram fee was paid by the permanent establishment to its head office. That assumption is the very matter on which the Tribunal recorded a finding the other way. The question of law that

truly arises is whether, on the facts as found, section 105(1)(c) is attracted at all. This Court has, in appropriate cases, reframed a proposed question so as to bring out the real issue.¹ We accordingly reframe the question as under:

“Whether, the Appellate Tribunal having found that the monogram fee was paid or payable to General Electric Company, a legal entity distinct from the head office of the respondent, the deduction of that fee was barred by section 105(1)(c) of the Income Tax Ordinance, 2001?”

III. SUBMISSIONS

8. Mr. Mukesh Kumar Khatri, learned counsel for the applicant, submitted that the respondent is a permanent establishment of an American company, and the expenses claimed are therefore head office expenses which cannot be allowed under the law.
9. Mr. Yousuf Khalid Anwer, learned counsel for the respondent, supported the order of the Tribunal. He submitted that GEI USA and GEC are separate entities, and that the monogram fee is not a head office expense as the officer had treated it. He prayed that the order of the Tribunal be maintained.
10. We have heard learned counsel and examined the record, including the orders of the Additional Commissioner and the Tribunal.

IV. THE SCOPE OF SECTION 105(1)(c)

11. As the whole of section 105 bears on the question, it is reproduced in full. The provision has remained unaltered throughout the tax years in question:

“105. Taxation of a permanent establishment in Pakistan of a non-resident person.— (1) The following principles shall apply in determining the income of a permanent establishment in

¹ *ABN AMRO Bank (Royal Bank of Scotland) v. Taxation Officer III, Audit Division, Large Taxpayer Unit, Karachi* [2011 PTD 438]; *Schlumberger Seaco Inc. v. Deputy Commissioner of Income Tax* [2020 PTD 386].

Pakistan of a non-resident person chargeable to tax under the head “Income from Business”, namely: —

(a) The profit of the permanent establishment shall be computed on the basis that it is a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the non-resident person of which it is a permanent establishment;

(b) subject to this Ordinance, there shall be allowed as deductions any expenses incurred for the purposes of the business activities of the permanent establishment including executive and administrative expenses so incurred, whether in Pakistan or elsewhere;

(c) no deduction shall be allowed for amounts paid or payable by the permanent establishment to its head office or to another permanent establishment of the non-resident person (other than towards reimbursement of actual expenses incurred by the non-resident person to third parties) by way of:

(i) royalties, fees or other similar payments for the use of any tangible or intangible asset by the permanent establishment;

(ii) compensation for any services including management services performed for the permanent establishment; or

(iii) profit on debt on moneys lent to the permanent establishment, except in connection with a banking business; and

(d) no account shall be taken in the determination of the income of a permanent establishment of amounts charged by the permanent establishment to the head office or to another permanent establishment of the non-resident person (other than towards reimbursement of actual expenses incurred

by the permanent establishment to third parties) by way of:

- (i) royalties, fees or other similar payments for the use of any tangible or intangible asset;
- (ii) compensation for any services including management services performed by the permanent establishment; or
- (iii) profit on debt on moneys lent by the permanent establishment, except in connection with a banking business.

(2) No deduction shall be allowed in computing the income of a permanent establishment in Pakistan of a non-resident person chargeable to tax under the head “Income from Business” for a tax year for head office expenditure in excess of the amount as bears to the turnover of the permanent establishment in Pakistan the same proportion as the non-resident’s total head office expenditure bears to its worldwide turnover.

(3) In this section, “head office expenditure” means any executive or general administration expenditure incurred by the non-resident person outside Pakistan for the purposes of the business of the Pakistan permanent establishment of the person, including —

- (a) any rent, local rates and taxes excluding any foreign income tax, current repairs, or insurance against risks of damage or destruction outside Pakistan;
- (b) any salary paid to an employee employed by the head office outside Pakistan;
- (c) any travelling expenditures of such employee; and
- (d) any other expenditures which may be prescribed.

(4) No deduction shall be allowed in computing the income of a permanent establishment in Pakistan of a non-resident

person chargeable under the head “Income from Business” for —

(a) any profit paid or payable by the non-resident person on debt to finance the operations of the permanent establishment; or

(b) any insurance premium paid or payable by the non-resident person in respect of such debt.”

12. Clause (a) states the governing principle. The profit of a permanent establishment is to be computed as though it were a distinct and separate person, dealing wholly independently with the non-resident person of which it forms part. Clause (b) allows the expenses incurred for the purposes of its business, wherever incurred. Clause (c) then withholds a deduction for a defined class of payments, namely royalties, fees for services and profit on debt, paid or payable by the permanent establishment “to its head office or to another permanent establishment of the non-resident person”, save to the extent that they reimburse actual expenses incurred by the non-resident person to third parties.
13. The reason for clause (c) is not far to seek. A branch and its head office are one legal person. A royalty or fee charged by the head office to its own branch reflects no outlay to anyone outside that person; it is an internal allocation. If allowed, it would enable the non-resident to reduce the profit taxable in Pakistan by charging itself for its own assets and services. The clause therefore admits such amounts only where they pass on a real cost incurred to a third party. In *ABN AMRO Bank*,² a Division Bench of this Court traced section 105(1) to Article 7 of the OECD and United Nations Model Conventions and explained that clauses (c) and (d) are mirror provisions, each concerned with dealings between the Pakistani permanent

² *ABN AMRO Bank (Royal Bank of Scotland) v. Taxation Officer III, Audit Division, Large Taxpayer Unit, Karachi* [2011 PTD 438], paragraphs 8 to 11 and 15.

establishment on the one hand and the head office and other permanent establishments of the non-resident person on the other. Both clauses, in other words, operate within the circle of a single legal person.

14. The words of clause (c) draw that circle with precision. The payee must be “its head office” or “another permanent establishment of the non-resident person”. Each expression describes a part of the same non-resident person. A separately incorporated company is neither, even where it belongs to the same group and even where it is the parent or an affiliate of the non-resident. Clause (c) is a disabling provision: it takes away a deduction that clause (b) would otherwise allow. It is a settled rule of construction that a law which places a disability applies only to cases which clearly fall within its ambit, and that a disabling provision is to be read according to its plain language.³ The rule applies with added force to a disabling provision in a fiscal statute. The reach of clause (c) cannot, therefore, be extended by implication to payees whom the legislature has not named.
15. The scheme of the Ordinance points the same way. Where a payment is made to a related but separate person, the Ordinance treats the two as associates under section 85, and section 108, read with Chapter VI of the Income Tax Rules, 2002, provides a distinct mechanism through which the Commissioner may allocate income or deductions between associates so as to reflect an arm’s length result. The general conditions of deductibility also remain in place. These provisions have their own requirements and procedure. Section 105(1)(c) is not a substitute for them, and a concern that a payment to a group company is

³ *Hashim Ali v. The State* [PLD 1963 (W.P.) Lahore 82], where it was held that, unless they provide otherwise, laws which confer rights or place disabilities apply only to those cases which clearly fall within their ambit; *Matloob Ellahi Paracha v. Raja Arshad Mahmood* [PLD 2024 Supreme Court 663], where the Supreme Court held that a disabling provision is to be construed by its plain language.

excessive, or lacks commercial substance, is not met by treating that company as the head office.

16. Learned counsel for the applicant described the monogram fee as a head office expense. The Ordinance does use the expression “head office expenditure” in sub-sections (2) and (3) of section 105, but for a different purpose: those provisions limit the deduction for executive and general administrative expenditure incurred by the non-resident person outside Pakistan for the purposes of the Pakistani permanent establishment. The disallowance in these cases was not made under that provision, and a royalty paid to a third entity for the use of its marks is not expenditure of that description. The expression cannot, therefore, carry the payment into clause (c).

V. THE FINDING OF THE TRIBUNAL AND THE REFERENCE JURISDICTION

17. Whether the monogram fee was paid to the head office or to some other person is a question of fact. The Tribunal is the last fact-finding forum under the Ordinance, and its findings of fact are conclusive in the reference jurisdiction unless shown to rest on no evidence, or to be perverse or based on conjecture.⁴ It answered that question on the documents before it: the agreements of 2013 and 2016, the related party notes in the audited accounts, and the regulatory filings of the two companies. It found that the fee was payable to GEC, a legal entity separate from GEIL USA, which is the head office of the respondent.
18. In its jurisdiction under section 133, this Court decides questions of law arising out of the order of the Tribunal. It does not reappraise the evidence or substitute its own view of the facts for that of the Tribunal.⁵ No case of perversity,

⁴ *Collector of Sales Tax and Central Excise, Lahore v. Qadbros Engineering (Pvt.) Ltd.* [2023 SCMR 939]; *Commissioner Inland Revenue (Special Zone for Builders and Developers), Islamabad v. Khudadad Heights* [2025 SCMR 716]; *Collector of Customs v. Urooj Autos* [2022 PTD 1882].

⁵ *Mountain States Mineral Enterprises Inc. v. Commissioner of Income Tax (Appeals)* [2008 PTD 1087]; *Commissioner Inland Revenue v. Centre for Management Sciences* [2013 PTD 1].

absence of evidence or misreading of the record has been made here. Learned counsel for the applicant did not refer to any material suggesting that the fee reached the head office, that the agreements were not genuine, or that the identity of the payee had been misread. The submission restates the premise of the assessment order, that the respondent is a branch of the entity receiving the fee, whereas the record shows the respondent to be the branch of GEII USA. A shared name and a common group do not make two companies one person. The same understanding underlies the allowance of the technical licensing fee by the Additional Commissioner himself, which was paid to other GE entities and was allowed precisely because it was not paid to the head office.

19. It may also be noticed that the show cause notice confronted the respondent under section 105(1)(c) alone. The observation in the assessment order that the arrangement formed part of a profit shifting scheme was not the basis of the charge, and the question before us is confined to section 105(1)(c). In *Snamprogetti Engineering*,⁶ the Supreme Court held that the burden of establishing the facts on which the charge against a non-resident rested, there the existence of a permanent establishment, lay in the first instance on the department, and that a view of the assessing officer not supported by material on record could not be sustained. The same approach holds good for the factual premise of a disallowance under section 105(1)(c).
20. Once the finding of fact stands, the answer follows from the text of the provision. A payment to GEC is not a payment by the permanent establishment to its head office or to another permanent establishment of the non-resident person, and clause (c) is not attracted. The respondent had

⁶ *Snamprogetti Engineering B.V. v. Commissioner of Inland Revenue, Zone-II, L.T.U., Islamabad* [2023 PTD 863] (Supreme Court of Pakistan).

also relied before the forums below on the relevant double taxation convention; as the question is answered on the terms of the Ordinance itself, we express no view on that submission. Nor do we express any view on whether the payment could have been examined under any other provision of the Ordinance, since that question does not arise in these references.

VI. THE ANSWER TO THE QUESTION

21. The reframed question is answered in the negative, that is, against the applicant and in favour of the respondent. It follows that the Tribunal was justified in deleting the disallowance of the monogram fee made under section 105(1)(c) of the Ordinance for tax years 2019, 2020, 2022 and 2023.

VII. ORDER

22. Income Tax Reference Applications Nos. 432 to 435 of 2024 are answered in the above terms and stand dismissed.
23. A copy of this judgment be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal Inland Revenue, as required by section 133(8) of the Ordinance.

JUDGE

JUDGE

Karachi, dated: 25.09.2026