

IN THE HIGH COURT OF SINDH AT KARACHI
Income Tax Reference Application No. 140 of 2026

Present:

Mr. Justice Agha Faisal
Mr. Justice Shah Nawaz Memon

M/s AMS Supplies, Karachi	Applicant
<i>Versus</i>	
The Commissioner Inland Revenue & another	Respondents

Date of hearing: 07.10.2026
Date of decision: 07.10.2026

Applicant: Through Messrs. Mustafa Sajid Zuberi and Sajid Hussain Zuberi, Advocates.
Respondent: Through Mr. Irfan Mir Halepota, Advocate.

JUDGMENT

DR. SHAH NAWAZ MEMON, J.: — This reference under section 133 of the Income Tax Ordinance, 2001 ("the Ordinance") is directed against the order dated 30.03.2026 of the learned Appellate Tribunal Inland Revenue, Division Bench-IV, Karachi ("the Tribunal") in ITA No. 121/KB/2026 for tax year 2024. The Tribunal maintained an amendment of the applicant's deemed assessment under section 122(5A), by which profit on debt that the applicant had offered under the final tax regime was brought to tax under the normal tax regime. The questions turn on whether the jurisdictional conditions of section 122(5A) were met and on the place of the applicant's claim to apportionment of expenditure under sections 40 and 67 of the Ordinance read with rule 13 of the Income Tax Rules, 2002 ("the Rules").¹

¹Rule 13(1) to (3)(a): "(1) This rule applies for the purposes of section 67, which provides for apportionment of expenditure, deductions and allowances incurred for more than one purposes. (2) Any expenditure, deductions and allowances that is incurred for a particular class or classes of income shall be allocated to that class or classes, as the case may be. (3)(a) Any common expenditure excluding financial expenses relatable or attributable to non-business advances or loans and the amount referred to in sub-rule (2) relatable to business including presumptive and exempt income, shall be allocated to each class of income according to the following formula, namely: $A \times B/C$ where A is the amount of the expenditure incurred; B is the total amount of gross receipts (without deduction of expenditures) for the tax year for the class of income; and C is the total amount of gross receipts (without deduction of expenses, deductions and allowances) and net gains for the tax year of all classes of income."

I. FACTS OF THE CASE

2. The applicant is an association of persons engaged in export. In its return for tax year 2024 it declared export proceeds of Rs. 5,744,377,000, dividend of Rs. 933,234 and profit on debt of Rs. 149,827,742. The profit on debt was shown in the final, fixed and reduced tax segment of the return, against the code meant for profit on National Savings instruments pertaining to previous years under section 39(4A),² and the tax of Rs. 22,474,161 withheld on it at 15% was treated as the full tax on that income. No expenditure was claimed against the profit on debt. The return was taken to be an assessment order under section 120.
3. On 08.09.2025 the Additional Commissioner Inland Revenue, Range-A, Zone-III, RTO-I, Karachi issued a notice under section 122(9) read with section 122(5A), stating that profit on debt of Rs. 149,923,632 had not been offered to tax under the normal tax regime and calling upon the applicant to explain, with supporting documentary evidence by 17.09.2025, why it should not be charged under section 39(1)(c). The applicant sought, and was granted, adjournments on 17.09.2025, 22.09.2025 and 16.10.2025, each time stating that the details and documents called for were under compilation. No reply and no document was filed. By order dated 24.10.2025 the profit on debt was brought to tax under the normal tax regime in terms of section 39(1)(c) read with section 7B,³ and a demand of Rs. 29,287,845 was raised.
4. In appeal before the learned Commissioner Inland Revenue (Appeals-VI), one of the grounds (ground 7) stated that the

²Section 39(4A): "Where (a) any profit on debt derived from investment in National Savings Deposit Certificates including Defence Savings Certificate paid to a person in arrears or the amount received includes profit chargeable to tax in the tax year or years preceding the tax year in which it is received; and (b) as a result the person is chargeable at higher rate of tax than would have been applicable if the profit had been paid to the person in the tax year to which it relates, the person may, by notice in writing to the Commissioner, elect for the profit to be taxed at the rate of tax that would have been applicable if the profit had been paid to the person in the tax year to which it relates."

³Section 7B: "(1) Subject to this Ordinance, a tax shall be imposed, at the rate specified in Division IIIA of Part I of the First Schedule, on every person, other than a company, who receives a profit on debt from any person mentioned in clauses (a) to (d) of sub-section (1) of section 151. (2) The tax imposed under sub-section (1) on a person, other than a company, who receives a profit on debt shall be computed by applying the relevant rate of tax to the gross amount of the profit on debt. (3) This section shall not apply to a profit on debt that (a) is exempt from tax under this Ordinance; or (b) exceeds five million Rupees." Section 39(1)(c): "Income of every kind received by a person in a tax year, if it is not included in any other head, other than income exempt from tax under this Ordinance, shall be chargeable to tax in that year under the head 'Income from Other Sources', including the following, namely: ... (c) profit on debt; ..."

amendment had been made without regard to sections 40(1)⁴ and 67 and rule 13. Neither that ground nor the written arguments of 22.12.2025 stated what expenditure was claimed, in what amount, or on what basis it was to be apportioned, and no computation or document in support was placed on record. The appeal was dismissed on 30.01.2026 on the view that the return carried an incorrect claim and that both conditions of section 122(5A) stood fulfilled.

5. In the second appeal the plea was repeated as ground 5. On 02.03.2026, when the departmental representative was absent, counsel for the applicant addressed a letter to the Additional Commissioner, stated to be on the Tribunal's instructions, enclosing the grounds of appeal, a one page schedule of general, administrative, financial and miscellaneous expenses and a summary profit and loss account for tax year 2024, and conveying that departmental comments on ground 5 were required on 12.03.2026. The letter bears the receiving stamp of the Taxpayer's Facilitation Centre, RTO-I, Karachi dated 03.03.2026 and is at page 117 of the court file. The appeal was thereafter heard on 12.03.2026 and 25.03.2026. Before the Tribunal the applicant claimed that expenditure of Rs. 84,396,716, being a share of its general, administrative, financial and miscellaneous expenses, was deductible against the profit on debt, so that no further tax was payable.
6. By the impugned order the Tribunal dismissed the appeal, together with an application for an additional ground concerning the rate of tax. On jurisdiction, it held that the return had treated profit on debt above the threshold of Rs. 5 million as final, contrary to section 39(1)(c) read with section 7B(3)(b); that this was an error apparent

⁴Section 40(1): "Subject to this Ordinance, in computing the income of a person chargeable to tax under the head 'Income from Other Sources' for a tax year, a deduction shall be allowed for any expenditure paid by the person in the year to the extent to which the expenditure is paid in deriving income chargeable to tax under that head, other than expenditure of a capital nature." Section 67: "(1) Subject to this Ordinance, where an expenditures, deductions and allowances relates to (a) the derivation of more than one head of income; or (ab) derivation of income comprising of taxable income and any class of income to which sub-sections (4) and (5) of section 4 apply, or; (b) the derivation of income chargeable to tax under a head of income and to some other purpose, the expenditures, deductions and allowances shall be apportioned on any reasonable basis taking account of the relative nature and size of the activities to which the amount relates. (2) The Board may make rules under section 237 for the purposes of apportioning deductions, expenditures and allowances."

from the record; and that the resulting loss of revenue satisfied the condition of prejudice (paragraphs 6 to 8). On the claim under sections 40 and 67, it held that the plea had not been raised in the original or first appellate proceedings and that the claim was not substantiated, the burden lying on the applicant under section 136⁵ (paragraph 9); and it rejected the complaint of want of hearing (paragraph 10). Those findings are set out in Part VI below.

II. THE QUESTIONS PROPOSED

7. The applicant has proposed the following questions of law:
- A.** Whether there was any prejudice to the interest of revenue when reassessing Applicant's profit on debt income under the declared final tax regime to the normal tax regime? And in doing this reclassification, whether the Applicant had a right of adjusting expenses under section 67 of the Ordinance read with Rule 13 of the Income Tax Rules, 2002?
 - B.** Whether proceedings under section 122(5A) of the Income Tax Ordinance, 2001, can be maintained when the preconditions conferring this jurisdiction, namely error and prejudice to the interest of revenue, is not apparent from the record and can only be established through further inquiry, investigation or examination of additional material?
 - C.** Whether the learned Appellate Tribunal Inland Revenue erred in law in presuming prejudice to the interest of revenue solely on account of the treatment accorded to the profit on debt income, without first determining whether any additional tax liability was legally chargeable after considering the Applicant's statutory claim under sections 40 and 67 of the Ordinance read with Rule 13 of the Income Tax Rules, 2002?
 - D.** Whether the absence of any demonstrable loss to the exchequer, particularly where the recomputation resulted in an excess tax payment/refund position, negates the essential

⁵Section 136: "In any appeal by a taxpayer under this Part, the burden shall be on the taxpayer to prove, on the balance of probabilities (a) in the case of an assessment order, the extent to which the order does not correctly reflect the taxpayer's tax liability for the tax year; or (b) in the case of any other decision, that the decision is erroneous."

jurisdictional requirement of "prejudice to the interest of revenue" under section 122(5A)?

III. SUBMISSIONS

8. Learned counsel for the applicant contended that the applicant was condemned unheard, since it had provided the requisite documents to the Tribunal as well as to the department. He referred to the letter dated 02.03.2026 at page 117, addressed to Mr. Naseer Ahmed, Additional Commissioner Inland Revenue, RTO-I, Karachi, which carries the receipt of the FBR Facilitation Centre dated 03.03.2026. On that basis he contended that the applicant was wrongly denied the adjustment of expenses under section 67 read with rule 13. He relied upon *S.N.H. Industries*,⁶ *Muhammad Iqbal Rind*⁷ and *Coca Cola Pakistan*,⁸ and prayed that the questions be answered in favour of the applicant and against the department.
9. Mr. Halepota, learned counsel for the department, submitted that the Tribunal has discussed at length the invocation of section 122(5A) and the change from the final to the normal tax regime (page 17 of the court file). He submitted that despite repeated opportunities before the assessing officer, the Commissioner (Appeals) and the Tribunal, the applicant failed to substantiate its claim by producing the requisite documents and information. As to page 117, he submitted that it is an afterthought, that no documents have so far been submitted, and that no such case was ever urged before any forum.
10. We have heard learned counsel and examined the record with their assistance.

IV. THE SCOPE OF THE REFERENCE

11. Under section 133 this Court decides the questions of law arising out of the Tribunal's order, and the Tribunal's order stands modified in terms of the judgment.⁹ The Tribunal remains the final forum of

⁶*S.N.H. Industries v. Income Tax Department* [2004 PTD 330].

⁷*CIR v. Muhammad Iqbal Rind & Sons* [2022 PTD 1411].

⁸*Coca Cola Pakistan Ltd. v. CIR, LTO Lahore* [2026 PTD 669], also reported as 2026 SCLR 27.

⁹Section 133(7): "The High Court upon hearing a reference under this section shall decide the question of law raised by the reference and pass judgment thereon specifying the grounds on which such

fact, and its findings of fact are ordinarily not reopened in a reference. A finding becomes open to examination where it is reached without evidence, by leaving out of account material on the record, or on a reading of the record that the record does not bear, for a finding so reached raises a question of law.¹⁰ We approach the questions on that footing.

V. SECTION 122(5A): ERROR AND PREJUDICE

12. Section 122(5A) permits the Commissioner to amend an assessment order "if he considers that the assessment order is erroneous in so far it is prejudicial to the interest of revenue". The two elements must coexist: the order must be erroneous, and the error must be prejudicial to the revenue. An incorrect assumption of fact or an incorrect application of law makes an order erroneous; but where the assessing authority has adopted one of the courses permissible in law, or one of two possible views, the order is not erroneous merely because the revenue prefers the other, unless the view taken is unsustainable in law.¹¹ The error and the prejudice must also be discernible from the record on which the Commissioner acts; the provision does not license a roving inquiry in search of material that may later disclose an error.¹² These principles, on which the applicant relies, are not in dispute. The question is their application.
13. Section 7B subjects profit on debt received by a person other than a company to tax on the gross amount at the rate in Division IIIA of Part I of the First Schedule, but by sub-section (3)(b) the section does not apply to profit on debt that exceeds five million rupees. Profit on debt beyond that limit takes its ordinary place under section 39(1)(c) as income under the head "Income from Other Sources" and is taxed under the normal regime. The applicant's

judgment is based and the Appellate Tribunal's order shall stand modified accordingly." See *Squibb Pakistan v. CIR* [2017 SCMR 1006].

¹⁰*CIR v. Descon Engineering* [2020 PTD 873], where concurrent findings of the appellate fora were held not open to interference in a reference unless shown to be perverse or contrary to the record.

¹¹*S.N.H. Industries* [2004 PTD 330]; *Muhammad Iqbal Rind* [2022 PTD 1411], para 7. The expression in section 122(5A) was there read in the light of section 66A of the Income Tax Ordinance, 1979, which used the same words.

¹²*Muhammad Iqbal Rind* [2022 PTD 1411], para 8. The words "after making, or causing to be made, such enquiries as he deems necessary" were omitted from section 122(5A) by the Finance Act, 2021, and the provision as it stood for tax year 2024 carries no such power.

return itself shows profit on debt of nearly Rs. 150 million in the final tax segment, at the rate withheld, under a code meant for National Savings profit of earlier years. Nothing beyond the return was needed to see that this treatment lay outside the law. This is not a case of two views, nor of a choice between permissible courses; the deemed assessment simply accepted a treatment that section 7B(3)(b) excludes. The error was apparent on the record and was identified in the show cause notice itself. Question B, which assumes that error and prejudice could be established only through further inquiry, proceeds on a premise that the facts do not bear out.

14. Prejudice appears from the same record. The deemed assessment closed the applicant's liability on the profit on debt at the tax withheld on the gross amount. Under the normal regime the same receipt forms part of taxable income charged at the rates applicable to an association of persons. The record before the Additional Commissioner contained no claim to any deduction against that income: none was made in the return and none in answer to the notice. On that record the income stood assessed at too low a rate, a form of under-assessment which the Ordinance itself recognises,¹³ and the prejudice was real rather than presumed.
15. The applicant's answer is that, had its expenditure been apportioned, the tax under the normal regime would have been less than the tax already withheld, so that the revenue lost nothing. We are unable to treat that answer as one that takes away the jurisdiction. Whether there is prejudice is judged on the record on which the Commissioner forms his view, as is the error. A claim to deductions never made in the return, and not made when the taxpayer was called upon to explain, cannot be read back into the deemed assessment so as to say that the order was not prejudicial when it was made. Otherwise the jurisdiction under section 122(5A) would turn not on the order sought to be amended but on what the taxpayer might later assert. *Coca Cola Pakistan* does not suggest

¹³Section 122(5)(ii) speaks of a case where "total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund".

that. There the taxpayer had itself apportioned its common expenditure in its return on a gross profit basis; the department sought to substitute the formula in rule 13; and the Supreme Court held that, so long as the taxpayer's basis was reasonable, its displacement in favour of rule 13 could not be said to result in income escaping assessment or being under-assessed.¹⁴ The deemed assessment in that case embodied a permissible choice made by the taxpayer. The deemed assessment here embodied no apportionment at all; it rested on a regime the law did not allow. The principle that a lawful choice by the taxpayer cannot be displaced by the department's preferred method has no application to a return in which no such choice was made.

16. We therefore hold that the jurisdiction under section 122(5A) was lawfully assumed, and the Tribunal's conclusion to that effect does not call for interference.

VI. THE CLAIM UNDER SECTIONS 40 AND 67

17. The applicant's second line is that, once its profit on debt was taken into the normal regime, it was entitled to set off a share of its expenditure. As a proposition of law that is correct. Profit on debt taken out of the final regime is income under the head "Income from Other Sources", and section 40(1) allows, in computing income under that head, a deduction for expenditure paid in the year "to the extent to which the expenditure is paid in deriving income chargeable to tax under that head", other than capital expenditure. Where expenditure relates to more than one head of income, or to taxable income and income subject to final taxation, section 67 requires it to be apportioned "on any reasonable basis taking account of the relative nature and size of the activities to which the amount relates", and rule 13 provides a method for the purpose. *Coca Cola Pakistan* explains that rule 13 is a reasonable basis where it applies on its own terms but is not the only one, and that the taxpayer may show that the basis it has adopted is also reasonable.¹⁵ The same judgment confines the exercise to

¹⁴*Coca Cola Pakistan* [2026 PTD 669], paras 4 and 8.

¹⁵*Coca Cola Pakistan* [2026 PTD 669], paras 6 and 7.

common expenditure, that is, expenditure not clearly allocable to a particular class of income.¹⁶

18. But a deduction is not allowed on assertion. Whether, and how much of, the applicant's expenditure of Rs. 408,498,357 was in fact paid in deriving profit on debt; which of its heads, such as salaries, fuel and transportation, commission and legal charges, are common to all three streams of income and which belong to the export business alone; and whether the basis of allocation is reasonable, are questions of fact. The burden of establishing them lies on the taxpayer, and in an appeal section 136 places that burden on it in terms. The Tribunal, as the final forum of fact, has found that the burden was not discharged. That finding can be revisited in a reference only if it is shown to rest on no evidence or on a misreading of the record.
19. The record bears the finding out. Before the assessing officer the applicant was called upon to produce documentary evidence, took three adjournments on the plea that the documents were under compilation, and produced nothing. Before the Commissioner (Appeals) the claim was mentioned only as a bare reference to sections 40(1) and 67 and rule 13, without any amount, basis or supporting material. To that extent the Tribunal's observation that the plea had not been raised before the authorities below is correct in substance: the claim, as a claim of a stated amount, was put to neither of them. It was before the Tribunal that the figure of Rs. 84,396,716 was first advanced, and the Tribunal, as the last forum of fact, recorded what followed in paragraphs 9 and 10 of its order:

"9. ... Furthermore, the Appellant claimed expenditures of Rs. 84,396,716 at this forum, but failed to provide any documentary evidence or financial trail to substantiate these claims despite multiple opportunities provided by this Tribunal. Under Section 136 of the Ordinance, the burden of proof in appeals lies squarely upon the taxpayer to establish the veracity of claimed deductions. A mere oral assertion or a post-facto production of profit and loss account without

¹⁶Coca Cola Pakistan [2026 PTD 669], para 9, read with rule 13(2) and the definition of "common expenditure" in rule 13(6).

documentary support cannot subdue the statutory requirement.

10. ... Notwithstanding the appellant's claim, we, as the final fact-finding forum, afforded the Appellant four distinct opportunities on 20 February 2026, 02 March 2026, 12 March 2026 and 25 March 2026 to produce the record for departmental examination, which were not utilized. It is settled law that a party cannot complain of a lack of opportunity when their own conduct reflects a persistent failure to exercise the opportunities provided."

20. These are findings of fact recorded by the Tribunal on its own proceedings. They show that, beyond a profit and loss account, nothing was produced before the Tribunal from which the expenditure, its nature or its connection with the profit on debt could be tested, though four dates were given for the purpose. The reference application asserts in general terms that computations and accounts had been placed on record, but it points to no acknowledgment, order sheet or other material showing that any such record was filed before the Tribunal; and at the hearing learned counsel founded the applicant's case on nothing but the letter at page 117. Nothing has been shown to us that would suggest the Tribunal misstated what took place before it.
21. The letter at page 117 does not alter the position. It was written on 02.03.2026, and the appeal was heard twice thereafter, on 12.03.2026 and 25.03.2026. Nothing on the record shows that on either date the applicant brought the letter to the Tribunal's notice, claimed that documents had been supplied to the department, or sought verification; the impugned order, which records the applicant's contentions in some detail, makes no mention of it. The letter surfaces for the first time in this reference. Its enclosures, moreover, are a one page schedule of expenses and a summary profit and loss account, which is the very kind of material the Tribunal found insufficient without documentary support, and not the underlying record. A party which has had repeated opportunities at three levels to substantiate a claim, and has not availed them, cannot be heard to say that it was condemned

unheard. Mr. Halepota's submission that the plea founded on page 117 is an afterthought is borne out by the record.

22. The applicant's own material, filed with this reference, points the same way. The certificate of apportionment issued by its chartered accountants, at page 143 of the court file, is dated 20.09.2024, a year before the notice of 08.09.2025; yet before the assessing officer the applicant thrice sought time on the plea that the documents were under compilation, and it produced the certificate neither to him nor to the Commissioner (Appeals). The same certificate records that profit on debt "is subject to minimum tax under the normal law", whereas the return, filed thereafter, declared it under the final regime. We do not rest our decision on this document, which is not shown to have been before the Tribunal; but read on its own terms it supports the view taken by the Tribunal rather than the plea now advanced.
23. The concurrent finding that the claim was not substantiated is therefore a finding of fact, supported by the record, and does not give rise to a question of law calling for interference in this reference.

VII. THE ANSWERS TO THE QUESTIONS

24. Our answers to the questions are as follows:

- A.** The first part is answered in the affirmative: the deemed assessment was prejudicial to the interest of revenue. As to the second part, a person whose profit on debt is charged under the normal regime may, in law, claim a deduction under section 40(1) and the apportionment of common expenditure under section 67 on any reasonable basis; but the claim must be established, and the concurrent finding that the applicant failed to substantiate it is a finding of fact which is not open to interference. Both parts are answered against the applicant.
- B.** The question does not arise on the facts. The error and the prejudice were apparent from the record, and no further inquiry was needed to establish them.

- C.** Answered in the negative, against the applicant. The Tribunal did not presume prejudice; prejudice was apparent from the record. The applicant's claim under sections 40 and 67 read with rule 13 was considered and rejected for want of proof.
- D.** Answered in the negative, against the applicant. A recomputation advanced at the second appellate stage, founded on deductions not claimed in the return and never substantiated, does not negate the prejudice that existed on the record when the jurisdiction was assumed.

VIII. ORDER

25. For the foregoing reasons, the reference is dismissed, and the order of the Tribunal dated 30.03.2026 in ITA No. 121/KB/2026 is maintained. The interim order passed at the time of admission stands vacated.
26. There shall be no order as to costs.
27. A copy of this judgment shall be sent under the seal of this Court to the learned Appellate Tribunal Inland Revenue, Karachi, as required by section 133(8).

J U D G E

J U D G E

Karachi,

Dated: 7th day of October 2026

Ayaz PS.