

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. *D - 5264* of 2019

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmad Khan.

1. *For orders on Misc. No. 22875/2019.*
2. *For orders on Misc. No. 22876/2019.*
3. *For orders on Misc. No. 22877/2019.*
4. *For hearing of main case.*

Dated: 16.08.2019

Mr. Makhdoom Ali Khan, advocate for petitioner.

1. Through instant petition, petitioner has impugned a Show Cause Notice dated 20.04.2018 issued under Section 122(9) read with Section 122(5A) of the Income Tax Ordinance, 2001 for the Tax Year 2015, with particular reference to Para: 2 of such Notice, whereby, petitioner has been confronted that the brought forwarded minimum tax credit claimed at Rs.211,478,620/- under Section 113(2)(c) of the Income Tax Ordinance, 2001 during Tax Years 2010 to 2014 cannot be allowed adjustment or to be brought forward for Tax Year 2015 in view of judgment of Sindh High Court in the case of Commissioner Inland Revenue, Zone-II, Karachi v. Messrs kassim Textile Mills (Pvt.) Limited, Karachi reported as **[(2013)] 108 Tax 58 (H.C. Kar)** and **2013 PTD 1420.**

2. Learned counsel for the petitioner has candidly submitted that reliance has been rightly placed by the respondents on the cited judgment, however, aforesaid

judgment of Sindh High Court has been appealed against before the Hon'ble Supreme Court of Pakistan, whereas, Hon'ble Supreme Court has been pleased to grant leave against such judgment vide order dated 13.05.2014, copy of which has been annexed along with memo of petition as Annexure "H". Learned counsel further submitted that a different view has been taken by a Divisional Bench of Lahore High Court in ITR No.255/2016 {*Re: Commissioner Inland Revenue v. M/s Education Excellence Ltd.*}, wherein, according to learned counsel for the petitioner, it has been held that since the provisions of Section 113(2)(c) of the Income Tax Ordinance, 2001 are beneficial in nature, therefore, its benefit has to be extended to a taxpayer by allowing adjustment of minimum tax, even in cases, if no tax was payable during preceding five years'. It has been prayed that respondents may be directed to allow carry forward and adjustment of entire amount of minimum tax where no tax is payable or paid or alternatively dismiss instant petition in view of earlier judgment of Divisional Bench of this Court, however, restraining the respondents not to take any adverse action pursuant to impugned Show Cause Notice for a period of sixty days.

3. We have heard the learned counsel for the petitioner, perused the impugned Notice and the decision of a Divisional Bench of Sindh High Court as well as of Lahore High Court, as referred to hereinabove on the subject controversy. It is a settled legal position that a judgment of a Divisional Bench of High Court is binding on the subsequent Divisional Bench of the same High Court, unless it is held to be per-incurium

by the subsequent Divisional Bench or in case, the subsequent Bench intends to take a different view, then in such eventuality, request for constitution of a Larger Bench is to be made to the Hon'ble Chief Justice for decision by Larger Bench of the same High Court.

4. In view of hereinabove legal position, we are not persuaded to take a different view as already taken by a learned Divisional Bench of this Court in the case of Commissioner Inland Revenue, Zone-II, Karachi v. Messrs Kassim Textile Mills (Pvt.) Limited, Karachi reported as **[(2013)] 108 Tax 58 (H.C. Kar)** and **2013 PTD 1420**, therefore, we do not find any substance in the instant petition, more particularly, when the same has been filed against issuance of Show Cause Notice, whereas, no final adverse order has been passed in the instant case.

5. Accordingly, instant petition is misconceived, which is hereby dismissed in limine alongwith listed application.

At this juncture, learned counsel for the petitioner has made a request that the operation of this order may be suspended for a period of sixty (60) days to enable the petitioner to approach the Hon'ble Supreme Court and to get a decision on the subject legal provisions, as according to learned counsel, leave has already been granted to consider the same legal issue. The request of learned counsel for the petitioner appears to be reasonable, therefore, the operation of instant order shall remain suspended for a period of thirty (30) days from the date of receipt of certified copy of this order, whereas, respondents may not

pass final adverse order in respect of carry forward and adjustment of minimum tax for a period of thirty days.

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