

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

ITRA 11 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

- 1. For orders on office objection No.27
- 2. For hearing of main case

18.11.2025

Mr. Munawar Ali Memon, advocate for the applicant
Mr. Faisal Rasheed Ghouri, advocate for respondent

Per learned counsel, the impugned judgment is not a speaking order as it contains no independent deliberation, discussion and/or reasoning. Learned counsel states that dealing with the /is, the tribunal has rendered the judgment in a perfunctory manner and the same is not befitting the last fact-finding forum in the statutory hierarchy.

Learned counsel for the respondent insists that the contentions of the applicant are incorrect. In such regard, it is considered appropriate to reproduce the operative part of the impugned judgment which reads as follows:

9. We have heard the learned representatives of both the parties at length on this issue. The submissions made on behalf of the taxpayer have substance. The larger Bench of this tribunal in the case of Meezan Bank Ltd cited supra, inter alia, observed that the issue of calling for and examining details to arrive at some erroneousness in the order which resulted in revenue loss, does not fall within the limited scope contemplated in section 122(5A) of the Ordinance. If the scope of inquiry, as interpreted by the respondent department, is taken to be correct, then any information, details, documents can be called for under section 122(5A) read with section 122(9), which is not the intent of legislature, because in such an event the provision of Section 177, relating to audit, will become redundant. This principle has been settled in various judgments of the Tribunal including in taxpayer's own case cited supra. The appellate tribunal in various judgments has also elaborated the scope of 'enquiry' and held that enquiry cannot be in the nature of fishing and roving enquiry. It is also an immutable principle of law that defective assumption/exercise of jurisdiction by the authorities are incurable.
10. The Hon'ble Supreme Court of Pakistan through a judgment reported as 2002 SCMR 122 held that "where essential feature of assumption of jurisdiction is contravened or forum exercises power not vested in it or exceeds authority beyond the limit prescribed by law the judgment is rendered coram non-judice and inoperative."
11. In view of above, both the orders of the lower forums are hereby annulled and the tax demand is deleted accordingly. Since we have decided the appeal on legal issue, therefore, we do not see the necessity of dilating upon the merits of the case.

The Appellate Tribunal is the last fact-finding forum in the statutory hierarchy; therefore, it is incumbent upon it to render independent deliberations and findings on each issue. The manner in which the appeals in general are to be addressed has been emphasized by the Supreme Court in the judgment reported as 2019 SCMR 1626. This High Court has consistently maintained that the Appellate Tribunal is required to proffer independent reasons and findings, and in the absence thereof a perfunctory order could not be sustained. Reliance is placed on the judgment dated 02.10.2024 in SCRA 1113 of 2023 and judgment dated 27.08.2024 in SCRA 757 of 2015. Earlier Division Bench judgments have also maintained that if the impugned order is discrepant in the manner as aforesaid, the correct course is to remand the matter for adjudication afresh. Reliance is placed on the judgment dated 10.12.2024 in ITRA 343 of 2024.

We are of the considered view that the impugned judgment could not be considered to be a speaking order and is *prima facie* devoid of any independent reasoning etc. The entire judgment comprises essentially of reproduction and is crowned with a dissonant conclusion. Hence, no case is set forth to sustain the impugned judgment, which is hereby *set aside* and the matter is remanded back to the Appellate Tribunal for adjudication afresh in accordance with law.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001.

Judge

Judge

Amjad