

IN THE HIGH COURT OF SINDH, KARACHI

ITRA Nos.173 of 2016

Date	Order with signature of Judge
------	-------------------------------

**Present: Mr. Justice Aqeel Ahmed Abbasi,
Mr. Justice Nazar Akbar.**

For hearing of main case.

01.11.2017

Dr. Shah Nawaz, advocate for Applicant.
Mr. Arshad Siraj, advocate for the Respondent.

-.-.-.-

ORDER

1. Through instant reference application, the applicant initially proposed three questions, however, when the matter was taken up for hearing at Katcha Peshi on 23.2.2017, learned counsel for the applicant candidly submitted that applicant will press questions No.1 & 3 only which, according to learned counsel for the applicant are questions of law arising from impugned order dated 9.2.2016 passed by the Appellate Tribunal, Inland Revenue in ITA No.834/KB/2013 (Tax year 2011). The said questions are reproduced as under:-

- i) “Whether Appellate Tribunal Inland Revenue was justified to reject departmental appeal by relying on judgment which refers to onus of department to prove Fair Market Value (FMV) of asset whereas the subject matter pertained to adequacy of opportunity of being heard?”
- iii) “Whether the learned Appellate Tribunal Inland Revenue was justified to confirm the deletion of addition at Rs.200(M) on the basis that the assessing officer has made addition without application of mind despite the fact that the same was established by department on the basis of difference in sales tax and income tax return for the period and the taxpayer failed to refute despite according ample opportunities?”

2. Notice of instant Reference Application was issued to the respondent in respect of the aforesaid two questions, pursuant to which, Mr.Arshad Siraj, advocate has shown appearance and filed Vakalatnama on behalf of the Respondent.

3. Learned counsel for the applicant, after having argued the matter at some length, submits that from perusal of the impugned order passed

by the tribunal in the instant case as well as the order of Commissioner (Appeals) it has emerged that both the Appellate Forums below have seriously erred in law and facts while declaring that order passed by the Taxation Officer is illegal, and the addition made by the Taxation Officer was not justified. Per learned counsel, once the Taxation Officer had confronted the taxpayer with regard to certain discrepancies in the return and the accounts, particularly, the difference of sales in the Sales Tax Return and Income Tax Return filed by the tax payer for the relevant period, and opportunity to explain was provided to the tax payer, the burden was upon the tax payer to submit response to such show cause notice, and to explain the discrepancy pointed by the said Taxation Officer. Per learned counsel, since the tax payer failed to offer any explanation, and the appellate authorities were of the view that show cause was not specific about transactions, then the proper course would have been to remand the matter back to the Taxation Officer, with the directions to confront the tax payer by specifying the party wise sales and to provide reasonable opportunity of being heard to the tax payer so that the discrepancy pointed out in the show cause notice, could have been duly responded by the tax payer.

4. While confronted with above contention of learned counsel for the applicant, learned counsel for the respondent has candidly submitted that matter may be remanded back to the concerned Commissioner / Taxation Officer to provide reasonable opportunity to the tax payer and to pass fresh order in accordance with law. Both the learned counsel have consented to disposal of instant reference application by remanding the matter back to the Taxation Officer to decide the issue afresh after providing opportunity of being heard.

5. Accordingly, by consent of both the learned counsel, instant reference application is disposed of with directions to the Taxation Officer to provide reasonable opportunity of being heard to the respondent, however, only to the extent of subject controversy, agitated through

instant reference, which shall be duly responded by the respondent, whereafter, appropriate order may be passed in accordance with law. It is expected that such exercise may be completed preferably, within a period of two months, from the date of receipt of this order. Learned counsel for the parties may supply the copy of this order to the concerned Commissioner / Taxation Officer, within one week, to ensure compliance.

Instant reference application stands disposed of in the above terms.

JUDGE

JUDGE

SM