IN THE HIGH COURT OF SINDH, KARACHI

I.T.R.A. No. 203 *of 2017*

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI &
MR. JUSTICE ZULFIQAR AHMED KHAN.

The Commissioner Inland Revenue, Zone-I, LTU

Vs.

M/s. Mapak Edible Oil [Pvt.] Ltd.

Applicant:	through Mr. Altamish Faisal Arab, advocate
Date of Hearing:	16.10.2018.
Date of Order:	16.10.2018.

O R D E R

Aqeel Ahmed Abbasi, J:- Through instant reference application, the applicant has proposed following question, which according to learned counsel for the applicant, is a question of law, arising from impugned order dated 28.02.2017, passed by the Appellate Tribunal Inland Revenue [Pakistan], Karachi in ITA No. 826/KB of 2013 [Tax Year 2012], for opinion of this Court:-

> *"Whether under the facts and in the circumstances of the case, the learned Tribunal was justified to hold that the respondent's toll manufacturing receipts fall under normal tax regime when the nature of toll manufacturing receipts is that of contract in terms of Section 153(1)(c) of the Income Tax Ordinance, 2001 as FTR receipts?"*

2. Learned counsel for the applicant, after having read out the question proposed through instant Reference Application and the impugned order passed by the Appellate Tribunal in the instant case, has submitted that the amount received by the respondent towards toll manufacturing receipts was liable to be taxed under Final Tax Regime, as according to learned counsel, such receipts are in the nature of contract receipts covered under Section 153(1)(c) of the Income Tax Ordinance, 2001, therefore, the Appellate Tribunal Inland Revenue was not justified in confirming the order passed by the Commissioner (Appeals),

whereby, such receipts have been taxed under Normal Tax Regime instead of Final Tax Regime.

3. We have heard the learned counsel for the applicant, perused the impugned order passed by the Appellate Tribunal Inland Revenue as well as the order passed by two authorities below, which reflects that the decision of the Taxation Officer, while treating toll manufacturing receipts under Final Tax Regime, is based on mere presumption that toll manufacturing receipts are received on account of execution of contract, hence covered under Section 153(1)(c), whereas, this fact has been ignored that even **execution of contract for sale of goods or the rendering of or providing of services**, has been excluded from the purview of Final Tax Regime (FTR). Such version of the Taxation Officer was not approved by the Commissioner (Appeals), who has passed an elaborate order on the subject controversy. It will be advantageous to reproduce the findings of the Commissioner (Appeals) as contained in Ground No. 3, reads as follows:-

> *" The next issue pertains to treatment of refining income of Rs.108,793,000/- being toll manufacturing receipts under FTR instead of NTR. The Additional Commissioner has treated these receipts under FTR for two reasons. Firstly for the reason that in the Tax year 2009 the taxpayer itself declared such receipts under FTR. Secondly that toll manufacturing receipts, according to the Additional Commissioner, fall in the ambit of execution of a contract hence are covered under FTR in terms of section 153 (1)(c).*
>
> *The learned AR on the other hand has explained that the issue has been decided by my predecessors for tax year 2010 and 2011 in the favour of the appellant in the following manner:*
>
> > *"The next issue pertains to treatment of refining income of Rs.54,540,000/- being toll manufacturing receipts under FTR instead of NTR. The Additional Commissioner has treated these receipts under FTR for two reasons. Firstly for the reason that in the immediately preceding year the*

taxpayer itself declared such receipts under FTR. Secondly that toll manufacturing receipts, according to the Additional Commissioner, fall in the ambit of execution of a contract hence are covered under FTR in terms of section 153(1)(c). The learned AR on the other hand has explained that under the toll manufacturing activity the appellant has rendered/provided services of crushing of seeds to its customers has charged service charges. It has been contended that this activity constitutes manufacturing activity as defined in section 153 (7) of the Income Tax Ord., 2001. It has further been contended that toll manufacturing activity constitutes rendering or providing of services and a contract for rendering or providing of services has been excluded from the ambit of execution of contract as defined in section 153(1)(c) of the Ordinance.

I have gone through the rival contentions and have observed that the appellant has offered its crushing facility to various clients for crushing of seeds and in return clients are paying service charges against use of such facility. By no stretch of imagination such an activity, generally known as toll manufacturing, could be termed as a contract as no specific contract needs to be executed for use of such facility. Assertion of Additional Commissioner in this regard has not been found convincing. As regards the contention that the appellant itself declared toll manufacturing under FTR in tax year 2009, suffice to say that it is a settled proposition that the courts and the government functionaries entrusted with the application of law are supposed to apply correct law. Reliance is placed on a judgment of Peshawar High Court reported as 2004 PTD 1994. The Hon'ble High Court has held that the duty of the ITO is to apply correct law notwithstanding the claim of assesse, even if result is favourable to the assesse in the same way as he would decline assessee's claim of concession if not admissible under the law. Reliance is also placed as the decision of Trib8unal in 103 Tax 74 holding that the authorities seized of the matter are supposed to apply correct law to meet the ends of justice.

In view of above no exception can be taken on the basis of declaration of toll manufacturing receipts under FTR in 2009, as the same, in my opinion constitute receipts covered under normal law being on account of rendering/providing of services. The treatment meted out by Additional Commissioner in his impugned order to these receipts is not approved. He is directed to treat the

receipts of Rs.54,540,000/- under normal law instead of FTR."

I have gone through the above decision of my learned preceding commissioner and agreed with his findings that the receipts of the appellant are not covered under the FTR for the reasons mentioned above. Respectfully, following the same the ACIR is directed to treat the toll manufacturing receipt of the appellant amounting to Rs.76,367,000/- under normal tax regime."

4. Perusal of hereinabove finding as recorded by the Commissioner (Appeals) reflects that the similar treatment given by the Taxation Officer to the toll manufacturing receipts for the previous year, was not approved by the Commissioner (Appeals). An appeal was filed against the aforesaid order before the Appellate Tribunal, which was also dismissed while placing reliance on the earlier decision of the Appellate Tribunal in the case of ITA No. 221/KB in the following terms:-

"6. The Commissioner (Appeals) after having examined the facts of the case and by placing reliance on an earlier decision of the Tribunal on the subject controversy has rightly set aside such treatment of the Taxation Officer with the direction to modify the order accordingly. It will be advantageous to reproduce the finding of the Appellate Tribunal in the case of ITA No.741/KB/2005, as relied by the Commissioner (Appeals) in its order:-

" We have head the rival arguments of both the learned representative and have also ;perused the available record. We have gone through the words of statute, Section 153(1)(b), sections 153(6), 153(7) and Section 169 of the Income Tax Ordinance, 2001 and also the First Schedule for rates of taxes to be levied, of the Income Tax Ordinance, 2001 we do not find any place whereby the tax deducted under Section 153(I)(b) have been treated a final discharge of tax liability. Where the Part-III of First Schedule relevant Division III whereby the tax liability, whereby the tax deduction on payment of Goods and Services have defined in sub-section (2) of the aforesaid Division which clearly stated that in the case of transport services 2% of the gross amount payable to be deducted as tax under section 153(I)(b). The case-law cited by learned AR are equally applicable in the appellant's case.

> *Keeping in view the facts and circumstances of this case, we are of the opinion that the learned CIT (A) was justified to hold that Section 153(I)(b) was applicable in this case. Hence, the order of the learned CIT(A) is confirmed and the departmental appeal is hereby dismissed. ”*

5. We do not find any error or legal infirmity in the impugned order passed by the Appellate Tribunal in the instant case, which is primarily based on appreciation of facts of the case and correct application of law, hence does not require any interference of this Court. Moreover, plain reading of Section 153(1)(c) of the Income Tax Ordinance, 2001, shows that payments for the rendering of or providing of services, which includes the Toll manufacturing services for third parties, are not covered under Final Tax Regime, irrespective of the fact that such services are provided under a contract. Learned counsel for the applicant while confronted with hereinabove factual and legal position as emerged in the instant case, could not controvert the same.

6. Accordingly, having found no substance in the instant Reference the same is dismissed and the question proposed by the applicant is answered in “AFFIRMATIVE”, against the applicant” and in favour of respondent.

Instant Reference Application stands disposed of in the above terms alongwith listed application.

JUDGE

JUDGE

A.S.