

IN THE HIGH COURT OF SINDH AT KARACHI

(Extraordinary Reference Jurisdiction)

I.T.R.A. No. 345 of 2016

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I.T.R.A. No. 346 of 2016

Date	Order with signature of Judge
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Present:

**Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Mahmood A. Khan.**

Fresh Case

For hearing of Main Case.

09.12.2019:

Mr. Amjad Jawed Hashmi, advocate for applicant(s)
a/w. Mr. Saleem-ul-Haq, advocate.

ORDER

1. Learned counsel for the applicant(s) has filed a Statement containing following reformulated common question, which according to learned counsel, is a questions of law, arising from the combined impugned order dated 15.07.2016 passed by the Appellate Tribunal Inland Revenue (Pakistan), Karachi in ITAs No.1050/KB of 2015 [Tax Year 2009] and 1051/KB of 2015 [Tax Year 2010], and require opinion of this Court:-

“Whether in the facts and the circumstances of adjudicating the same issue of legality of various additions made u/s 21(c) r/s Sec 122(5A), the learned ATIR was justified in law by ordering simultaneously for their deletion as well as re-inquiry?”

2. After hearing the learned counsel for the applicant at some length, it transpired that proposed question is a question of fact, whereas, the matter has been remanded back to the Taxation Officer to decide the issue relating to addition under Section 21(c)

of the Income Tax Ordinance, 2001 afresh after verification. It is settled legal position that if any matter has been remanded back to the Tax Authorities for deciding the same afresh, or for the purposes of verification of expenditure under Section 21(c) of the Income Tax Ordinance, 2001 the reformulated question is a question of law, keeping in view the finding as recorded by the Appellate Tribunal Inland Revenue passed on the facts of the case, more particularly, when the matter has been remanded to the Tax Authorities for the purposes of verification of expenditure under Section 21(c) of the Income Tax Ordinance, 2001, no reference would lie against order of remand. While confronted with hereinabove factual and legal position, learned has submitted that Appellate Tribunal could have remanded the matter for decision afresh, however, without deleting the addition, therefore, the proposed reformulated question is a mixed question of fact and law, which may be answered in favour of the applicant and against the respondent.

3. We have heard the learned counsel for the applicant, perused the combined impugned order passed by the Appellate Tribunal with his assistance as well as the reformulated question, which reflects that the issue regarding addition under Section 21(c) of the Income Tax Ordinance, 2001, has been remanded back to the department for the purposes of verification with specific directions to verify that “*if the due tax liabilities were discharged by the recipients for both tax years and if the recipients are found to have paid their due tax liabilities for respective tax years, no further action is warranted against the appellant*”, whereas, “it has been further observed that “*if it cannot be verified that the legitimate tax liabilities of recipients were discharged by this, then directions have*

been issued to the effect that withholding tax shall be recovered from the appellant accordingly under the relevant provision of law”.

4. Hereinabove finding of the Appellate Tribunal depicts correct factual and legal position, which does not require any interference by this Court. More particularly, when the matter has been remanded back to the Taxation Officer to decide the issue of addition under Section 21(c) of the Income Tax Ordinance afresh after verification, whereas, against an order of remand, no reference would be maintainable as it does not give rise to any question of law to be decided by this Court under reference jurisdiction. Reliance in this regard can be placed in the case of *the Commissioner of Income Tax, Central Zone ‘B’, Karachi v. Messrs Electronic Industries Ltd., Karachi* [1988 PTD 111]; *The Commissioner of Income Tax West Zone, Karachi and another v. Messrs Khairpur Textile Mills Ltd. and others* [1989 PTD 500]; and *Messrs E.M. Oils Mills and Industries Ltd. through Director v. Commissioner of Income Tax, Audit Division II, Companies III, Karachi* [2011 PTD 2708].

5. Accordingly, we do not find any substance in the instant Reference Applications, which are dismissed in limine.

JUDGE

JUDGE

A.S.