

IN THE HIGH COURT OF SINDH AT KARACHI
(Extraordinary Reference Jurisdiction)

I.T.R.A. No. 28 of 2018

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

Fresh Case

1. For orders on Misc. No.16/2018.
2. For hearing of Main Case.

16.11.2020:

Mr. Shahid Ali Qureshi, advocate for the applicant.

ORDER

1. Through instant Income Tax Reference Application, the applicant has proposed following questions, which according to learned counsel for the applicant, are questions of law arising from the impugned order dated 28.09.2017 passed by the Appellate Tribunal Inland Revenue (Pakistan) Karachi in ITA No.834/KB/2012 [Tax Year 2010]:-

“1. Whether under the facts and circumstances of the case, the learned Tribunal was justified to delete the WWF in view of Supreme Court’s latest judgment dated 10.11.2016, since the judgment of S.C. is not applicable in this case because taxpayer is a manufacturer and law of WWF is prior to amendments made through the Finance Act 2006 & 2008 is applicable in the taxpayer’s case?”

“2. Whether under the facts and 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 execution of contract in terms of Section 153(1)(c) of the Income Tax Ordinance, 2001 as FTR receipts?”

2. However, after having read out the proposed questions and the impugned order passed by the Appellate Tribunal, and while confronted to point out any error or illegality in the impugned order,

learned counsel for the applicant has candidly stated that the Question No.1 is already covered by a judgment of the Hon'ble Supreme Court in the case of *Workers' Welfare Fund, M/O Human Resources Development through Secretary and others v. East Pakistan chrome Tannery (Pvt.) Ltd. through G.M. Finance, Lahore and others* [PLD 2017 SC 28], whereas, Question No. 2 has also been decided by a Divisional Bench of this Court through a reported judgment in the case of *Commissioner Inland Revenue)Zone-IV) v. M/s. Medic Aids (Pvt.) Ltd.* [2015 PTD 2533] and also in ITA No. 248/KB/2013, both the proposed questions against the applicant and in favour of the same respondent. Learned counsel for the applicant has also placed on record the copy of order dated 16.10.2018 passed by this Court in I.T.R.A. No. 203/2017 [Re: *The Commissioner Inland Revenue, Zone-I, LTU v. M/s. Mapak Edible Oil (Pvt.) Ltd.*] in respect of second question as referred to hereinabove.

3. We have heard the learned counsel for the applicant, perused the proposed questions and the impugned order passed by the Appellate Tribunal in the instant case. We have also examined the decisions of the Hon'ble Supreme Court and of the Sindh High Court, as referred to hereinabove by the learned counsel for the applicant. Since both the proposed questions have already been answered in the above cited judgments of the Hon'ble Supreme Court as well as the judgment of a Divisional Bench of this Court, therefore, both the proposed questions are hereby answered in 'AFFIRMATIVE" against the applicant and in favour of the respondent.

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

JUDGE

JUDGE

A.S.