

# **IN THE HIGH COURT OF SINDH AT KARACHI**

(Extraordinary Reference Jurisdiction)

## **I.T.R.A. No. 104 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. 119/2018.  
2      For hearing of Main Case.

**15.02.2021:**

Mr. S. Mohsin Imam, advocate for the applicant.

### **ORDER**

1. Through instant Reference Application, the applicant department has proposed following questions, which according to learned counsel for the applicant, are questions of law, arising from the impugned order dated 30.01.2018 passed by the Appellate Tribunal Inland Revenue (Pakistan) Karachi Bench at Karachi in ITA No.1251/KB-2016 [Tax Year 2012], for opinion of this Court: -

*“a) Whether under the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified to state that the WWF is not leviable on the appellant since it does not fall under any of the specified categories of “Industrial Establishment” placing reliance on Honourable Supreme Court of Pakistan’s judgment reported as 2012 PTD 501, when the case of the taxpayer is distinguishable from the ratio of the judgment mentioned supra?*

*b) Whether under the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified to state that the WWF is not leviable on the appellant since it does not*

*fall under any of the specified categories of “Industrial Establishment” placing reliance on Honourable Supreme Court of Pakistan’s judgment reported as 2012 PTD 501, whereas in case of the taxpayer, majority of shares are not owned by the Federal Government, hence, the taxpayer’s case does not fall under exclusion from the chargeability of WWF as per section 2(f)(vi) of the WWF Act, 1971?”*

2. After having read out the proposed questions and the impugned order passed by the Appellate Tribunal Inland Revenue, as well as the orders of the two authorities below, learned counsel for the applicant has submitted that the aforesaid questions are questions of law, whereas, the Appellate Tribunal has erred in fact and in law, while deciding the appeal in favour of the respondent while holding that WWF is not leviable on the appellant, since it does not fall under any of the specified categories of “Industrial Establishment”. It has been prayed that impugned order may be set-aside and the questions proposed may be answered in “Negative” against the respondent.

3. We have heard the learned counsel for the applicant, perused the impugned order passed by the Appellate Tribunal Inland Revenue in the instant case, as well as the orders passed by the two authorities below. We have also examined the relevant provision of WWF Ordinance, 1971, including the definition of the term “**industrial establishment**” and also the ratio of the judgment of the Hon’ble Supreme Court in the case of *Commissioner of Income Tax & another v. Messrs Pakistan Petroleum Ltd & others* [2012 PTD 501]. Perusal of the order passed by the Appellate Tribunal Inland Revenue in the instant case reflects that while deciding the appeal filed by the respondent, the Tribunal has minutely examined the relevant provisions of WWF Ordinance,

1971 with particular reference to the definition of the term “**industrial establishment**” as defined Section 2(f) of the WWF Ordinance, 1971, and by placing reliance the judgment of the Hon’ble Supreme Court, has been pleased to hold that since the respondent corporation has been established by the Government and its majority shares are also owned by the Government, therefore, it falls within the exclusion of the term “industrial establishment”, for the purposes of imposition WWF as **it is owned by the Government or by corporation established by Government or by Corporation established by Government or by a corporation the majority of the shares of which is owned by Government**. It will be advantageous to reproduce the relevant finding of the Appellate Tribunal Inland Revenue to this effect as contained in Para: 8 to 14 of the impugned order, which reads as follows:-

*“8. We have heard the learned representatives of the appellant/taxpayer and the department and also gone through the record. precisely record indicate that the appellant filed return of income tax year 2012, the same was e-filed on 04.10.2012 which was amended by the ACIR through Assessment Order dated 23-9-2015 under Section 122(5A) of the Income Tax Ordinance, 2001. The stance of the taxpayer is that the ACIR has levied federal workers welfare fund on the taxpayer on the ground that it is an “industrial establishment” as the said term is defined under section 2(f) of the Workers Welfare Fund Ordinance, 1971 and the exemption of workers welfare fund levy granted to corporations established by the Government or majority of whose shares are owned by the Government, as clause (vi) of section 2(f) of the WWF Ordinance. Whereas the learned counsel for the taxpayer urged that the taxpayer is a company and is not a corporation so the said levy will not applicable to the taxpayer so keeping in mind abovementioned prospects it would be convenient that the said definition be reproduced here:*

- (f) **“industrial establishment”** means—
  - (i) any concern owning or managing a factory, workshop or other

establishment in which articles are produced, adopted or manufactured with the aid of electrical, mechanical, thermal, nuclear or any other form of energy transmitted mechanically and not generated by human or animal agency;

- (ii) any concern working a mine or quarry or natural gas or oilfield;
- (iii) any concern running a public transport service;
- (iv) any concern engaged in the carriage or men and goods by inland mechanically propelled vessels;
- (v) any concern engaged in the growing of tea, coffee, rubber or cinchona; and
- (vi) any other concern or establishment which the 8[Federal Government] may, by notification in the official Gazette, declare to be an industrial establishment for the purposes of this Ordinance, but does not include any concern or establishment which is owned by Government or by corporation established by Government or by a corporation the majority of the shares of which is owned by Government;

9. *Since the Appellant is a corporation established by Government and its majority shares are also owned by the Government, such fact is also admitted by the learned DR therefore, we are of the view that the Appellant is not liable to WWF levy as clause (vi) of the above definition exclude the taxpayer as it is specifically speaks that the concerned which are owned by the government or a corporation where majority shares are owned by government.*

10. *Since the taxpayer is incorporated under the Companies Ordinance, 1984 as a result of the Pakistan Insurance Corporation (Re-organization) Ordinance, 2000 promulgated by President of Pakistan for converting Pakistan Insurance Corporation into Pakistan Reinsurance Company Limited. In this respect the appellant/taxpayer presented its Profile and History given in the financial statements, wherein it is stated that the Appellant is a public sector company under the administrative control of Ministry of Commerce, which is a wing of the Federal Government. It is also stated that majority shares of the*

*appellant is owned by the Federal Government. It is thus clear from the above facts that the Appellant is a corporation established by the Government.*

11. *Reference is also made of the judgment of Hon. Sindh High Court in the case of Pakistan Petroleum Limited (PPL) reported as 100 TAX 459, wherein it was held that PPL was not liable to WWF levy since majority of its shares were owned by the Government. The relevant extract of the judgment is reproduced below:*

“37. When we review section 2(f)(vi) of the Worker’s Welfare Funds in the light of charging section 4, we arrive at the conclusion that in the case of the applicant company the industrial establishment is the oil field, which is owned and operated by the applicant company and therefore, since the industrial establishment the income of which is chargeable to Workers Welfare Fund under section 4, is owned the applicant company are owned by government, therefore, it falls within the provision of exclusion-III to clause (6) of section 2(f).”

12. *The aforesaid judgment was later upheld by Hon. Supreme Court through the judgment reported as 2012 PTD 501. In the aforesaid case, Department’s representative, just like ACIR in the instant case, had raised the argument that exemption is granted under the WWF Ordinance only to corporations and, therefore, PPL being a private limited company cannot avail such exemption. Hon. Supreme Court has, however, rejected the DR’s argument and it was held that the work “corporation” as used in the WWF Ordinance and the word “company” as used in ordinary parlance are synonymous. The relevant extract of the judgment is reproduced below:*

12. It would also be seen that the term Corporation has not been defined in the Ordinance. In Black’s Law dictionary it has been defined as an entity having authority under law to act as a single person distinct from its shareholders who own it and having rights to issue stock and exist indefinitely. Consequently it follows that the word Corporation is synonymous with that of a Company as understood in ordinary parlance. Admittedly the respondents are either public or private limited companies in which the majority of the shares are owned by the government and as observed above this fact has never been disputed at any stage and hence in our opinion squarely covered under the exclusion clause of section 2(f) of the Ordinance.

13. *It is thus beyond doubt that “industrial establishment” owned by a company which is established by the Government or*

*whose majority shares are owned by the Government is outside the ambit of WWF levy.*

*14. So very respectfully following the judgments supra dilated by the Honourable Superior Courts, we are of the view that the WWF is not leviable on the Appellant, since it does not fall under any of the specified categories of "industrial establishment".*

4. In view of hereinabove facts and circumstances of the case, we do not find any factual or legal error in the aforesaid findings as recorded by the Appellate Tribunal Inland Revenue, and while, confronted with above factual legal position, learned counsel for the applicant could not controvert the same. Accordingly instant Reference Application being devoid any merits, is dismissed in limine alongwith listed application. Consequently, the questions proposed through instant Reference Application are answered in "**AFFIRMATIVE**" against the applicant and in favour of the respondent.

Instant Income Tax Reference Application stands dismissed in the above terms alongwith listed application.

***JUDGE***

***JUDGE***

**A.S.**