

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

I.T.R.A. No. 382 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. 782/2018.
2. For hearing of Main Case.

19.10.2020:

Mr. Muhammad Aqeel Qureshi, advocate for the applicant.

ORDER

1. The above Income Tax Reference Application has been filed against the impugned order dated 10.09.2018 passed by the Appellate Tribunal Inland Revenue (Pakistan) Karachi in ITA No.512/KB-2014, whereby, following questions have been proposed by the applicant, which according to learned counsel, have arisen from the impugned order passed by the Appellate Tribunal in the instant case. The proposed questions read as follows:-

“1. Whether on the facts and circumstances of the case, learned ATIR was justified to uphold the decision of CIR (A) in relation to determination of jurisdiction without appreciating the fact that as per PRAL system, taxpayer’s jurisdiction was lying in Zone-III, RTO, Karachi and thus Additional Commissioner, Audit Range, Zone-III, RTO, Karachi rightly passed order u/s 122(5A) of the Income Tax Ordinance?”

2. Whether on the facts and circumstances of the case, learned ATIR was justified to uphold the decision of CIR (A) through which the order passed u/s 122(5A) was annulled on the grounds of jurisdiction without considering the merits of the case and giving any findings on them?

3. Whether the findings of the Appellate Tribunal with regard to jurisdiction of the taxpayer, arrived at without exercising powers of causing further inquiry to be made by the Commissioner under section 132 of the Income Tax Ordinance, 2001 can be considered as correct determination of facts?"

2. Learned counsel for the applicant after having read out the proposed questions and the impugned order passed by the Appellate Tribunal in the instant case, as well as the order of the Commissioner (Appeals), has submitted that the Appellate Tribunal was not justified to confirm the order passed by the Commissioner (Appeals) on the point of jurisdiction, hence the same may be set-aside and the questions proposed may be answered in favour of the applicant and against the respondent.

3. We have heard the learned counsel for the applicant, perused the record and have also gone through with the impugned order passed by the Appellate Tribunal in the instant case as well as the order of the Commissioner (Appeals) with his assistance. From mere perusal of the questions proposed hereinabove, it appears that the proposed questions are questions of facts, as no legal question has been proposed, requiring this Court to give its opinion, while exercising its Reference Jurisdiction under Section 133(1) of the Income Tax Ordinance, 2001, which is restricted only to examine legal issues of public importance for guidance of both the taxpayer and the department. Moreover, there is concurrent finding of facts recorded by two appellate forums below relating to jurisdiction of the taxpayer in the instant case, whereas, learned

counsel for the applicant has not been able to point out any factual error or discrepancy in this regard. It will be advantageous to reproduce the finding of the Commissioner (Appeals) relating to jurisdiction of the taxpayer as contained in the concluding paras of the order dated 16.04.2014, which read as follows:-

At the outset, jurisdiction of the learned ACIR to pass the impugned order was challenged. According to the AR of the appellant, proper jurisdiction of the case lies with Zone IV, RTO, Karachi and not with Zone III, RTO, Karachi. In support of his contention, various orders such as order u/s 161/205 and copy of refund cheques issued from Zone IV, RTO, Karachi has been filed. Moreover, copy of exemption certificate issued by Commissioner Inland Revenue of Zone IV, dated 09.10.2013 was also submitted. The AR of the appellant further contended that none of the notices issued during the impugned proceedings were ever received by them. He has also produced before me copy of showcause notice u/s 122(9) dated 30.08.2013 requiring compliance on 6.9.2013 issued ACIR Zone III RTO Karachi which was received through e-mail on 13.3.2014 i.e. after finalization of the impugned order. It was also explained by the learned AR that had appellant received any notice, issue of proper jurisdiction would have been duly highlighted and sorted out.

After considering written as well as verbal arguments and after perusing the impugned order under appeal, it is abundantly clear that ACIR has acted in excess of his jurisdiction. Such action, being patently illegal can not be endorsed to hold field. In view of this, the impugned order is hereby annulled.”

4. The above finding of the Commissioner (Appeals) has been duly approved by the Appellate Tribunal Inland Revenue through impugned order in the following terms:-

“7. We have heard the arguments advanced by the learned D.R and have also perused the available record of the case. The impugned order has been passed by the learned CIR(A) after ascertaining the correct jurisdiction on the basis of previous history of the taxpayer.

8. The original order by the ACIR has been annulled giving the opportunity to the department to correct their mistake and the department instead of taking corrective measures has approach this tribunal in appeal. We after examining the case record find no reason to interfere with the impugned order and the same is maintained. The appeal filed by the department fails.”

5. We do not find any factual error or legal infirmity in the order passed by the Appellate Tribunal in the instant case, which is based on correct appraisal of facts and application of law, whereas, the learned counsel for the applicant has not been able to point any perversity or error in the finding as recorded by the two appellate forums in the instant case. Moreover, questions proposed hereinabove, are questions of facts and do not give rise to any question of law, which may require any opinion of this Court, while exercising its Reference Jurisdiction under Section 133(1) of the Income Tax Ordinance, 2001. Reliance in this regard can be placed in the case of *Collector of Customs & another v. Messrs Fatima Enterprises Ltd. & others* [2012 SCMR 416] and *Messrs Gold Trade Impex & another v. Appellate Tribunal of Customs, Excise and Sales Tax & others* [2012 PTD 377].

6. In view of hereinabove factual and legal position, we do not find any substance in the instant Income Tax Reference Application, which is hereby dismissed in limine alongwith listed application.

JUDGE

JUDGE

A.S.