

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

I.T.R.A. No. 62 of 2019

Date	Order with signature of Judge
------	-------------------------------

Present:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

Fresh Case

- 1 For orders on office objection No. 20.
2 For orders on Misc. No. 179/2019.
3 For hearing of Main Case.

09.02.2021:

Mr. Irfan Mir Halepota, advocate for the applicant.

ORDER

1. Through instant Reference Application, the applicant department has proposed following question, which according to learned counsel for the applicant, is a question of law, arising from the impugned order dated 28.09.2018 passed by the Appellate Tribunal Inland Revenue (Pakistan) Karachi in ITA No.1177/KB-2017 [Tax Year 2017]: -

“ Whether on the facts and circumstances of the case the learned Tribunal was justified in holding the instant appeal and impugned order in fractious, instead of remanding it back along with principal appeal (Connected yet different) ITA No. 797/KB-2017 to Commissioner-IR (Appeals) for re-adjudication? ”

2. After having read out the proposed question and the impugned order passed by the Appellate Tribunal Inland Revenue in the instant case, learned counsel for the applicant has submitted that instead of declaring instant appeal as infructuous, the

Appellate Tribunal Inland Revenue could have remanded back the matter to the Commissioner Inland Revenue (Appeals) to be decided alongwith the main appeal, which was remanded back by the Appellate Tribunal Inland Revenue for fresh decision in accordance with law.

3. We have heard the learned counsel for the applicant, perused the record and also gone through with the impugned order passed by the Appellate Tribunal Inland Revenue in the instant case, which reflects that the appeal filed by the assessee against the order passed under Section 182 of the Income Tax Ordinance, 2001, consequent upon the main order passed under Section 122(5A) of the Income Tax Ordinance, 2001 for Tax Year 2014 has been declared as infructuous, for the reason that since the order passed under Section 122(5A) of the Income Tax Ordinance, 2001 has been set-aside and the matter has been remanded back to be decided afresh, therefore, the order under Section 182 and the appeal arising therefrom has also become inoperative and infructuous.

4. We do not find any factual error or legal infirmity in the order passed by the Appellate Tribunal Inland Revenue under the facts and circumstances in the instant case for the reason that once the main order under Section 122(5A) of the Income Tax Ordinance, 2001 has been set-aside, there remains no adverse order in the field consequent to which order under Section 182 of the Income Tax Ordinance, 2001 was passed in the instant case, therefore, the consequential order of penalty also becomes inoperative and infructuous. Moreover, the applicant is otherwise not aggrieved by impugned order passed in the instant case as appeal before the Appellate Tribunal was filed by assessee and not by the department.

4. In view of hereinabove facts and circumstances of the case, we do not find any substance in the instant Reference Application, which is accordingly dismissed in limine alongwith listed application.

JUDGE

JUDGE

A.S.