

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

**Special S.T.R.A. No. 125 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**

1. For orders on Misc. No. 3834/2016.
2. For hearing of Main Case.

**25.11.2019:**

Mr. Irfan Mir Halepota, advocate for applicant.

**ORDER**

1. Through instant Reference Applications, applicant has proposed following question, which according to the applicant, is a question of law, arising from the impugned order dated 18.08.2016 passed by the Appellate Tribunal Inland Revenue, Karachi in STA No.182/KB/2013 [Tax Period July 2009 to November 2012], and require opinion of this Court:-

*“Whether under the facts and the circumstances of this case, the order of learned ATIR is in conformity with SRO 660(I)/2007 dated 30-06-2007 of the Sales Tax Act, 1990 whereby the learned Appellate Tribunal Inland Revenue has held that there was no revenue loss despite the fact that respondent has made default of withholding tax?”*

2. Learned counsel for the applicant submits that Appellate Tribunal Inland Revenue was not justified to uphold the order of the Commissioner (Appeals-I) Inland Revenue, Karachi, whereby, the amount in view of default in respect of 1% withholding tax at the time of purchases during the aforesaid period, has been deleted. Per learned counsel, in terms of SRO 660(I)/2007 dated 30.06.2007 and the Sales Tax Special Procedure (withholding)

Rules, 2007, respondent was required withholding tax at the rate of 1% at the time of purchases. It has been prayed that the impugned order passed by the Appellate Tribunal may be set-aside and the question proposed may be answered in Negative in favour of the applicant and against the respondent.

3. We have heard the learned counsel for the applicant, perused the record and the impugned order passed by the Appellate Tribunal in the instant case with his assistance, which reflects that there is concurrent finding of the two appellate forums with regard to the fact that the amount of 1%, which was required to be withhold at the time of making purchases for the aforesaid period, has been admittedly paid by the supplier, who instead of making payment of sales tax at the rate of 15%, has paid 16% sales tax in respect of supplies, which fact has not been disputed. Moreover, it has been further held that since the amount of sales tax, which was required to be paid, has already been paid and there is no loss of revenue, therefore, imposition of fine penalty default surcharge was not justified. Such finding as recorded by the two appellate forums below, does not suffer from factual error or legal infirmity.

4. Accordingly, we do not find any substance in the instant Sales Tax Reference Application, which is devoid of any merits, therefore, dismissed in limine alongwith listed application. Consequently, question proposed is answered in '**AFFIRMATIVE**' against the applicant and in favour of respondent.

***JUDGE***

***JUDGE***

**A.S.**