

justified to vacate the order of Deputy commissioner Inland Revenue, Enforcement Unit-I, Zone-I, Regional Tax Office, Sukkur passed under Section 170(4)/221(1) without going on the record that the Assessing Officer/Deputy Commissioner Inland Revenue, Enforcement, Enforcement Unit-I, Zone-I, Regional Tax Office, Sukkur has charged WWF on declared income instead of imputable income?

2. Learned counsel for the applicant after having readout the impugned order as well as orders passed by the two forums below has candidly submitted that first two questions as proposed through instant reference application do not arise from the impugned order, hence the applicant will only press question No.(iii) in view of the recent judgment dated 27.09.2016 passed by the Hon'ble Supreme Court in Civil Appeals No.1049 to 1055 of 2011 (and several other connected Civil Appeals) in the case of Workers Welfare Fund (WWF), Ministry of Human Resources Development, Islamabad through Secretary Employees Old Age Benefits Institution through its Chairman and another v. East Pakistan Chrome Tannery (Pvt.) Ltd. through its G.M. Finance, Lahore and others, whereby, Hon'ble Supreme Court of Pakistan has been pleased to declare that Worker's Welfare Fund is not a tax, hence, the amendments introduced through Finance Act, 2006 and 2008 are ultra-vires to the Constitution, therefore, the order passed by the Appellate Tribunal Inland Revenue in this regard otherwise does not suffer from any error or illegality.

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 orders of two authorities below. Contention of the learned counsel for the applicant with regard to question No.(iii) in view of the recent judgment of the Hon'ble Supreme Court relating to the amendment introduced through Finance Act, 2006 and Finance Act, 2008, the Workers Welfare Fund Ordinance, 1971 appears to be correct as it has been decided by the Hon'ble Supreme Court that WWF is not a tax, therefore, it cannot be amended through Finance Act, 2006 and Finance Act, 2008 respectively, whereas, in the instant case, it appears that the WWF has been proposed under Section 221 of the Income Tax Ordinance, 2001, which otherwise has been declared as illegal.

Moreover, the application of WWF in the instant case fallen under Final Tax Regime has also been declared to be illegal in the case of ***Commissioner of Income-tax v. Messrs Kamran Model Factory (2002 P.T.D 14)***.

4. Accordingly, question No.(iii) proposed through instant reference application is answered in affirmative against the applicant and in favour of the respondent.

Instant Reference Application stands disposed of in the above terms along with listed application.

JUDGE

JUDGE

Nadeem/PA*