

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Muhammad Faisal Kamal Alam

Income Tax Reference Application No.201 of 2005

M/s. State Life Insurance Corporation of Pakistan, Karachi (Applicant)

Vs.

The C.I.T., COS. III, Karachi (Respondent)

Income Tax Reference Application No.47 of 2006

M/s. State Life Insurance Corporation of Pakistan, Karachi (Applicant)

Vs.

The CIT, (Legal Division), Large Taxpayers Unit, Karachi (Respondent)

Income Tax Reference Application No.52 of 2006

M/s. State Life Insurance Corporation of Pakistan, Karachi (Applicant)

Vs.

The ACIT, Circle A-1, COS. III, Karachi (Respondent)

And

Income Tax Reference Application No.442 of 2006

M/s. State Life Insurance Corporation of Pakistan (Applicant)

Vs.

The Taxation Officer, Enforcement & Collection Division (Respondent)

Dates of hearing: 27.08.2020, 03.09.2020 and 02.11.2020.

For the applicant(s): Mr. Khalid Mehmood Siddiqui, Advocate.
(In all the matter)

For the respondent(s): Mr. Kafeel Ahmed Abbasi, Advocate.
(In all the matters)

J U D G M E N T

IRFAN SAADAT KHAN, J. The instant Income Tax Reference Applications (**ITRAs**) were admitted for regular hearing to consider the following questions of law:

ITRA No.201 of 2005 and ITRA No.52 of 2006

1. *Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was justified in holding that*

assessment has been correctly reopened in this case under Section 156 of the Income Tax Ordinance, 1979?

2. *Whether on facts and in the circumstances of case, the learned Income Tax Appellate Tribunal was justified in holding that the assessee is liable to pay tax under Section 80D of the Income Tax Ordinance, 1979?*

(The above questions pertain to assessment years 1993 – 1994 to 1996 – 1997.)

Whether on facts and in the circumstances of case, the learned Income Tax Appellate Tribunal was justified in holding that the assessee is liable to pay tax under Section 80D of the Income Tax Ordinance, 1979?

(The question No.2 above is common for the assessment years 1997 – 1998 and 1998 – 1999)

ITRA No.47 of 2006 and ITRA No.442 of 2006

- i) *Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in holding that the assessee is liable to pay tax under section 80D of the Income Tax Ordinance, 1979 despite the fact that the assessment in the case of Life Insurance Companies are made under rule-2 of the 4th Schedule to the Income Tax Ordinance, 1979 and rule-3 of the Schedule says, that in computing the surplus for the purposes of rule-2 the amount paid to or reserved for or expended on behalf of the policy holders shall be allowed as a deduction and in this case 97and half % is so paid to or reserved or expended on behalf of the policy holders which is wholly exempt from tax under this rule under section 31 of Nationalization Order (1972)?*
- ii) *Whether, on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal was justified in ignoring the fact that, in computing the surplus for the purpose of rule-2 amount paid to or reserved, or expended on behalf of policy holder shall be allowed under rule-3 of the Fourth Schedule as deduction and in case tax is charged under section 80D, rule-3 of the Fourth Schedule to the Income Tax Ordinance, 1979, shall become redundant, which is against the principle of interpretation of statues?*
- iii) *Whether, on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal was justified in ignoring the fact that, the assessment in case of Life Insurance Companies are made under rule-2 of the Fourth Schedule to the Income Tax Ordinance, 1979 which provides special method of assessment thus any other method of assessment is totally excluded by virtue of non-obstante clause contained in section 26(a) of the Income Tax Ordinance, 1979, hence Section 80D which is a separate self contained Section is not applicable in this case?*
- iv) *Whether, on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal was justified in ignoring the fact that tax has already been charged in this case under Rule-2 of the 4th Schedule to the Income Tax Ordinance, 1979 at 5% on entire surplus being dividend income at Rs. 137,887,318/- and then*

further addition has been made at Rs.65,623,600/- under section 80D of the Income Tax Ordinance, 1979 on the gross receipts from all sources as per revenue account including the interest and rent/profits on sale of investment/profits on sale of fixed assets and Miscellaneous Income?

The above four questions pertain to assessment years 1999 – 2000 to 2001 – 2002, whereas the first three questions i.e. i), ii) & iii) are common for the assessment year 2002 – 2003

Since the questions of law raised in the above ITRAs are common, hence they are proposed to be answered by this single judgment.

2. Briefly stated, the facts of the case are that the assessee is a State owned Life Insurance Corporation (hereinafter referred to as “**Corporation**”) engaged in providing life insurance services to its clients. The years of assessment under discussion pertain to assessment years 1993 – 1994 to 2002 – 2003. The assessment for the years 1993 – 1994 to 1996 – 1997 were finalized under the normal provision of the law, however, subsequently the Department on perusal of the record of the above referred assessments years found out that since the tax paid on the normal income of the Corporation was less than 0.5% of the declared turnover from all sources, therefore, a notice under Section 156 of the Income Tax Ordinance, 1979 (**repealed Ordinance**) was given to the Corporation. A reply thereof was furnished by the then authorized representative of the Corporation to the Assessing Authority (**AA**), which was found unsatisfactory and thereafter in respect of the assessment years 1993 – 1994 to 1996 – 1997 orders under Section 156 of the repealed Ordinance were passed on 30.09.2000 by requiring the Corporation to

pay minimum tax under the provision of Section 80D of the repealed Ordinance. The assessments for the years 1997 – 1998 to 2002 – 2003 however were finalized under Section 62 of the repealed Ordinance wherein also the tax liability under Section 80D was worked out against the Corporation. Appeals were preferred before the Commissioner of Income Tax (Appeals) [CIT(A)], who dismissed the appeals filed by the Corporation. Thereafter appeals were preferred before the Income Tax Appellate Tribunal (ITAT), which too dismissed the appeals filed by the Corporation. Reference Applications (RAs) thereafter were filed before the ITAT in respect of assessment years 1993 – 1994 to 2001 – 2002, which referred the above questions of law for opinion of this Court. However, for the assessment year 2002 – 2003 RA was filed directly under Section 133 of the repealed Ordinance before this Court, by raising the above questions of law. It may, however, be noted that the issue of rectification of mistake under Section 156 of the repealed Ordinance pertains to assessment years 1993 – 1994 to 1996 – 1997 only.

3. Mr. Khalid Mehmood Siddiqui Advocate has appeared on behalf of the Corporation and stated that the taxability of the Life Insurance Company is governed by Section 26 of the repealed Ordinance, which is a special provision of law. He stated that the profits and gains and the tax payable by an Insurance Company is not computed under normal methods of taxation but is specifically dealt with under Fourth Schedule to the Ordinance. He stated that since the taxation of Insurance Company is to be dealt with separately therefore

the normal provisions of law, as applicable to the other business, are not applicable to the Insurance Companies. He stated that the provision of Section 80D of the repealed Ordinance was introduced through Finance Act-1991 for charging 0.5% minimum tax on the persons where no tax is payable or the tax payable is less than one-half percent of the amount representing its turnover from all sources. According to Mr. Siddiqui the provision of Section 80D is applicable to the normal business taxpayers but not to the Insurance Companies, which are special in nature as their taxability is governed under Fourth Schedule to the Ordinance and since under Fourth Schedule there is no provision with regard to minimum tax hence the Corporation is not liable to pay tax under Section 80D of the Ordinance. He further stated that in case of any inconsistency the matter has to be resolved in favour of the Corporation.

4. He next submitted that so far as assessment years 1993 – 1994 to 1996 – 1997 are concerned initially normal assessments were made in these years, which were rectified under the provision of Section 156 of the repealed Ordinance, which action, according to him, is illegal and uncalled for. He stated there was no mistake apparent on record so as to invoke the provision of Section 156 of the repealed Ordinance in the above referred years, therefore, in these years the Department had made two errors; firstly by rectifying the orders under Section 156 of the repealed Ordinance and secondly applying the provision of Section 80D of the Ordinance upon the Corporation.

5. Mr. Siddiqui next submitted that the provision of Section 156 could only be invoked when there is a mistake apparent on the record. According to him in the years 1993 – 1994 to 1996 – 1997 the Department has changed its view while invoking the provision of Section 156 of the repealed Ordinance and it is a settled provision of law that no rectification is permissible in respect of the matters which require detailed deliberations, lengthy arguments and /or long drawn arguments but rectification is only permissible where the mistake is obvious, apparent, patent or floating from the surface of the record. To support his viewpoint, the learned counsel has placed reliance on the decisions given in the following cases:

- i) *Commissioner of Income Tax/Wealth Tax Vs. Muhammad Naseem Khan (2013 PTD 2005)*
- ii) *Commissioner of Income Tax, Karachi Vs. Messrs Shadman Cotton Mills Ltd., Karachi through Director (2008 SCMR 204)*
- iii) *Commissioner of Income Tax, Karachi Vs. Abdul Ghani (2007 PLD SC 308)*
- iv) *Commissioner of Income-Tax Company's II, Karachi Vs. Messrs National Food Laboratories (1992 SCMR 687)*

6. The learned counsel further stated that the provision of Section 26 of the repealed Ordinance starts with the non-obstante clause, i.e. “Notwithstanding anything contained in this Ordinance”, hence while interpreting the above provision of the law read with Fourth Schedule to the Ordinance, the applicability of other provisions of the Ordinance, including that of Section 80D of the repealed Ordinance, are ousted. According to the learned counsel, the Department has erred in invoking the provision of Section 80D of the repealed Ordinance to the Corporation. He stated that the provision of Section

80D talks about aggregate of the turnover, whereas in the case Insurance Companies there is no concept of any turnover, therefore, even if it is assumed that the provision of Section 80D is applicable on the Corporation even then the said Section could not be applied since there is no turnover of an Insurance Company. He finally submitted that since the taxability of the Insurance Company is to be governed by the special provision of the law i.e. Section 26 of the repealed Ordinance read with Fourth Schedule to the repealed Ordinance, therefore, invoking the provision of Section 80D upon the Corporation is illegal and uncalled for. In support thereof, the learned counsel has placed reliance upon the following decisions:

- i) *The State Vs. Zia-ur-Rahman and others (PLD 1973 SC 49)*
- ii) *Messrs Elahi Cotton Mills Ltd. and others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others (PLD 1997 SC 582)*
- iii) *Messrs E.F.U. General Insurance Co. Limited Vs. The Federation of Pakistan and others (PLD 1997 SC 700)*
- iv) *Federal Bank for Cooperatives, Islamabad Vs. Ehsan Muhammad (2004 SCMR 130)*
- v) *Messrs E.F.U. General Insurance Co. Limited Vs. The Federation of Pakistan and others (1997 PTD 1693)*
- vi) *Commissioner (Legal) Inland Revenue Vs. Messrs EFU General Insurance Ltd. (2011 PTD 2042)*
- vii) *Commissioner of Income Tax Legal Division, Lahore and others Vs. Khurshid Ahmad and others (2016 PTD 1393)*

7. Mr. Siddiqui, in the end, stated that the above questions of law may therefore be answered in Negative i.e. in favour of the Corporation and against the Department.

8. Mr. Kafeel Ahmed Abbasi, Advocate, has appeared on behalf of the Department and stated that answers to the above questions of

law may be given in Affirmative i.e. in favour of the Department and against the Corporation. While elaborating his viewpoint, the learned counsel stated that no doubt the assessment for the years 1993 – 1994 to 1996 – 1997 were made under the normal provisions of the law but when the record and the statement of accounts, which were furnished by the Corporation itself, were examined it was found that the Corporation has not paid the minimum tax required from it, as the normal tax paid by the Corporation was worked out to be less than the minimum amount of tax required from the person, which mistake was apparent and patent from the record of accounts as per the return furnished by the Corporation itself. Hence the Corporation was given opportunity to furnish their reply, as required under the provision of Section 156(2) of the Ordinance. However, when the reply of the Corporation was found to be not satisfactory, only thereafter that the provision of Section 156 was invoked. Interestingly Mr. Abbasi has also relied upon the decision given in the case of *Commissioner of Income-Tax Company's II, Karachi Vs. Messrs National Food Laboratories (1992 PTD 570)*.

9. According to Mr. Abbasi invoking the provision of Section 156 of the Ordinance was neither through a long drawn process nor was a result of lengthy arguments but from the record available with the Department furnished by the Corporation itself in respect of the assessment years 1993 – 1994 to 1996 – 1997. The learned counsel then read out the provision of Section 156 of the Ordinance to support his stance. He further stated that the question of law which pertains to

above referred assessment years with regard to Section 156 of the Ordinance, in view of the submissions made by him, may be answered in Affirmative.

10. Mr. Abbasi next submitted that no doubt the taxability of an Insurance Company is governed by Section 26 read with Fourth Schedule of the repealed Ordinance but Corporation being a person, as defined under Section 2(32) of the repealed Ordinance, is not absolved from paying the minimum tax as required from it. He stated that if Section 26 starts with non-obstante clause (Notwithstanding anything contained in this Ordinance) so does Section 80D of the repealed Ordinance; which also starts with the non-obstante clause (Notwithstanding anything contained in this Ordinance). According to Mr. Abbasi the provision of Section 80D of the repealed Ordinance was introduced through Finance Act 1991, whereas Section 26 of the repealed Ordinance was part and parcel of the repealed Ordinance since its promulgation in the year 1979. He further stated that provision of Section 80D would prevail over Section 26 of the repealed Ordinance on two counts; firstly, it is a latter provision in the Ordinance and secondly Section 80D also starts with the non-obstante clause and in case of two provisions starting with non-obstante clause the latter would prevail over the former. In support thereof the learned counsel has placed reliance on the decisions given in the cases of *Syed Mushahid Shah and others Vs. Federal Investment Agency and others (2017 SCMR 1218)*, *K. Electric (PST) Ltd. Vs. The State & others*

(PLD 2019 Sindh 2097) and M/s. MCB Ltd. Vs. Federation of Pakistan & 2 others (PLD 2019 Sindh 624).

11. Mr. Abbasi further stated that the Corporation could not claim itself to be absolved from the provision of Section 80D on the ground that they being an Insurance Company are governed by Fourth Schedule and thus are not liable to pay the minimum tax as required from other persons as in his view the Corporation is very much liable to pay the minimum tax as required by it under the law. He finally stated that the answer to the questions raised in the instant ITRAs may be given in Affirmative i.e. in favour of the Department and against the taxpayer/Corporation.

12. We have heard both the learned counsel at considerable length and have also perused the law, the record, the decisions relied upon by them and have also made research on the question raised above.

13. Before proceeding any further, we would like to reproduce herein below the law relied upon by both the learned counsel.

Section 26. *Special provisions regarding business of insurance and production of oil and natural gas and exploration and extraction of other mineral deposits, etc. – Notwithstanding anything contained in this Ordinance,-*

(a) the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Fourth Schedule;

Section 80D. *Minimum tax on income of certain {persons. (1) Notwithstanding anything contained in this Ordinance or any other law for the time being in force, where no tax is payable [or paid] by a company [or a registered firm] [, an individual, an association of persons, an unregistered firm or a Hindu undivided family []/resident in Pakistan or the tax payable [or paid] is less than one-half per cent of the amount representing its turnover from all sources, the aggregate of the declared turnover shall be deemed to be the income of the said company*

[or a registered firm] [, an individual, an association of persons, an unregistered firm or a Hindu undivided family []/ and tax thereon shall be charged in the manner specified in sub-section (2).

[Explanation.- For the removal of doubt, it is declared that the expressions “where no tax is payable or paid” and “or the tax payable or paid” apply to all cases where tax is not payable or paid for any reason whatsoever including any loss of income, profits or gains or set off of loss of earlier years, exemption from tax, credits or rebates in tax, and allowances and deductions (including depreciation) admissible under any provision of this Ordinance or any other law for the time being in forced.]

(2) The company [or a registered firm] [, an individual, an association of persons, an unregistered firm or a Hindu undivided family []/ referred to in sub-section (1) shall pay as income tax-

(a) an amount, where no tax is payable [or paid], equal to one-half per cent of the said turnover; and

(b) an amount, where the tax payable [or paid], is less than one-half per cent of the said turnover, equal to the difference between the tax payable [or paid] and the amount calculated in accordance with clause (a)

Explanation: For the removal of doubt it is declared that “turnover” means the gross receipts, exclusive of trade discount shown on invoices or bills, derived from the sale of goods or from rendering, giving or supplying services or benefits or from execution of contracts.]

(3) Nothing in this section shall apply to an individual, an association of persons, an unregistered firm or a Hindu undivided family in respect of any assessment year commencing on, or after, the first day of July, 2001.]

Section 156. Rectification of mistakes.-*(1) Any income tax authority or the Appellate Tribunal may amend any order passed by it to rectify any mistake apparent from the record on its own motion or on such mistake being brought to its notice by any other income tax authority or by the assessee.*

(2) No order under sub-section (1), which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall be made unless the parties affected thereby have been given a reasonable opportunity of being heard.

(3) Where any such mistake is brought to the notice of any income tax authority by the assessee and no order under sub-section (1) is made⁴ by such authority before the expiration of the financial year next following the date in which it was so brought to its notice, the mistake shall be deemed to have been rectified and all the provisions of this Ordinance shall have effect accordingly.

(4) No order under sub-section (1) shall be made after the expiration of four years from the date of the order sought to be amended.

14. The provision of Section 80D of the repealed Ordinance was inserted vide Finance Act-1991 with the main objective to require from certain persons a minimum tax in the case where either no tax is payable by them or the tax paid by them is less than one half percent (0.5 %) of the amount representing their turnover from all sources. The term “turnover” has also been defined to be gross receipts, exclusive of trade discount shown on invoices derived from sale of goods or rendering of services etc., meaning thereby that Section 80D is applicable in respect of the items in which the said person is usually dealing its business, which could form its turnover. However it may be noted that there are certain exclusions with regard to what would not constitute turnover and with regard to the specific exclusions /exemptions as provided under Second Schedule to the repealed Ordinance. It is an admitted fact that the case of the Corporation does not fall under any of the exclusions as provided under Second Schedule to the repealed Ordinance with regard to non-applicability of the provision of Section 80D of the repealed Ordinance. Section 80D envisages that every individual should pay a minimum tax so as to put his share in the exchequer. The concept of minimum tax is also applicable in a number of other countries as well. The rationality of this provision has elaborately been discussed in the case of Elahi Cotton Mills supra. There are a number of provisions in the erstwhile Ordinance of 1979 and the present Ordinance 2001 dealing with the minimum tax mechanism.

15. The need of introducing Section 80D was considered necessary when it was thought that the persons who are either not paying the tax

or the tax paid is so less that they hardly contribute anything to the exchequer, the provision of Section 80D was introduced in the year 1991. As explained earlier the legality of Section 80D came up for hearing before the Hon'ble Supreme Court of Pakistan in the case of Elahi Cotton Mills Ltd. supra wherein the Hon'ble Apex Court found the same to be not suffering from any constitutional infirmity. The Hon'ble Supreme Court clearly observed that Section 80D is based on theory of "minimum tax" which envisages that every individual should pay a minimum tax towards the cost of the government (para-40 of the judgment). It was further observed in para-42 of the judgment of the Hon'ble Supreme Court that by introducing Section 80D the growth rate of income tax and growth in income tax receipts have shown improvement.

16. Now coming to the facts of the instant matters. From the averments of the parties it may be noted that precisely there are two questions which are to be decided by this Court; firstly whether under the facts and circumstances of the case the Department was justified in invoking the provision of Section 156 of the repealed Ordinance, pertaining to the assessment years 1993 – 1994 to 1996 – 1997, and secondly whether the Department was justified in applying the provision of Section 80D of the repealed Ordinance upon the Corporation, which is common in all the years under consideration. It may be noted that in respect of the assessment years 1993 – 1994 to 1996 – 1997 admittedly the assessments were completed under the provision of Section 62 of the repealed Ordinance. Thereafter on

going through the record it revealed that since the Corporation has not paid the minimum tax, which they were required to, then after giving opportunity of hearing to the Corporation, the said tax was levied. According to Mr. Siddiqui, since the issue of taxability of Section 80D of the repealed Ordinance was a contentious issue which require detailed deliberations and lengthy arguments, hence the same could not be considered as a mistake apparent from the record, which has been opposed by the counsel representing the Department.

17. Perusal of Section 156 of the repealed Ordinance clearly reveals that the said Section talks about rectification of a mistake in respect of the matters which are apparent from the record. The term “apparent” has not been defined in the law but has been interpreted in various judgments, according to which the mistake should be so obvious that it could be seen floating on the surface of the record and may not require any investigation or further evidence. The mistake should be so obvious that it should strike on the face of it and should not be the result of long drawn process of reasoning or where two opinions are possible. Now if the parameters of the present matters are examined, it could be seen that the figure of turnover was worked out by the Department on the basis of the accounts submitted by the Corporation itself. The figure of the turnover is very much available in the statement of accounts submitted along with the return of total income by the Corporation and could not be termed to have been obtained either by calling some additional evidence or making any fishing or

roving enquiries or by virtue of long drawn process but was very much furnished by the Corporation itself to the Department.

18. The term “record” has also not been defined in the Ordinance but would include any documentary evidence or information available with a person whether it is official record or public record. In the instant matter it could be seen that the figure of turnover of the Corporation from all sources has already been declared by the Corporation to the Department through its returns, meaning thereby that the figure of the turnover was already a matter of record with the Income Tax Department, hence it could not be said that applicability of Section 80D upon the Corporation was not a mistake floating on the surface as the same did not require any investigation or further evidence. In our view the mistake was so obvious that by taking a simple glance on the records furnished by the Corporation the turnover of the Corporation for the years under discussion could easily be worked out without any long drawn process, investigation and /or enquiry as the figures of the turnover were duly reflected in the accounts of the Corporation disclosed by them. It may be noted that this process, in our view, of imposing Section 80D on the Corporation does not entail entering into any controversy, investigation into the matter, obtaining additional evidences as it requires a simple calculation and application of 0.5% tax upon the turnover of the Corporation disclosed by it.

19. It may also be noted that it has nowhere been pleaded that the calculation of 0.5% tax with regard to the turnover determined by the

Taxation Officer was defective or excessive, etc. It may further be noted that what could constitute an insurance income has already been clarified by the then Central Board of Revenue (**CBR**), now Federal Board of Revenue (**FBR**), vide Circular No.4 of 1988, that in case of Insurance Company all the receipts whether from property, business, interest on securities, capital gains on sale of stocks and shares, dividend, yield of National Savings or Defence Certificate, etc. will constitute insurance income and will be liable to tax. Needless to state that as per Section 8 of the repealed Ordinance (now Section 214 of the Income Tax Ordinance-2001) the instructions of FBR are binding upon tax authorities. Reliance in this regard may be placed on the case of *Central Insurance Co. and others vs. Central Board of Revenue, Islamabad, etc. [(1993) 68 Tax 86 (S.C. Pak.)]*. We, therefore, are of the view that since the aspect of non-imposition of Section 80D upon the Corporation was quite apparent on the record, thus we do not find any illegality in the action taken by the Department in this behalf.

20. It may further be noted that the decisions relied upon by the learned counsel for the applicant(s) on this aspect in fact supports the case of the Department rather than supporting his case, as it has been found in a plethora of judgments either by the Hon'ble Supreme Court or the High Courts that the provision of Section 156 of the repealed Ordinance (Section 221 of the present Ordinance) could be invoked in the cases where the mistake is apparent on the record. Apart from the decisions referred to by the learned counsel for the applicant(s) we were also able to lay our hands on a decision given in the case of

Commissioner of Inland Revenue, Karachi Vs. Messrs E.N.I. Pakistan (M) Ltd., Karachi (2013 PTD 508) wherein the Divisional Bench of this Court has observed as under:

5. *We do not find any error or illegality in the order passed by the CIT (Appeals), while rejecting the rectification application moved by the applicant, whereas the Tribunal has rightly concurred with such findings, which otherwise depicts correct legal position. The Hon'ble Supreme Court of Pakistan, in the case of Messrs National Foods v. CIT reported as 1992 SCMR 687 = 1992 PTD 570 while defining the scope of rectification, has held that a mistake should be apparent from record, floating on surface and may not require any investigation or further evidence. It has been further held that a mistake which is sought to be rectified must be so obvious and apparent from record that it may immediately strike on the face of it. It may not be something which may be established by a long drawn process of reasoning on issues on which there could be conceivably two views or opinions. We may further observe that the scope of rectification is limited to the extent of rectification of an "error apparent from record" hence the said provision cannot be invoked as an alternate or substitute of an appeal, revision or review.*

21. The Hon'ble Supreme Court also in the case of National Food Laboratories and Shadman Cotton Mills Ltd. (quoted supra) were of the view that while invoking the said provision mistake may be floating on the surface which does not require any investigation or further evidence and it should be so obvious that on mere reading the order it may immediately strike on the face of it. In the instant matter also, as noted above, the aspect of ascertaining the turnover is very much obvious, patent and apparent from the record. We, therefore, under the circumstances, answer the question with regard to applicability of Section 156 of the Ordinance, which is common for the assessment years 1993 – 1994 to 1996 – 1997, in Affirmative i.e. in favour of the Department and against the Corporation.

22. The next aspect of the matter is with regard to the applicability of Section 80D of the repealed Ordinance. It has vehemently been

argued by Mr. Kafeel Ahmed Abbasi that no doubt both Sections 26 and 80D starts with non-obstante clause but since Section 80D was introduced subsequently and is a latter provision hence it would prevail. We would now discuss here the decisions cited by Mr. Abbasi in this behalf. In the decisions given in the case of MCB Ltd., noted above, a Divisional Bench of this Court has categorically observed that where two special laws contain competing non-obstante clause then the general rule is that the latter in time prevails. It may be noted that in the present case the latter in time provision is 80D of the repealed Ordinance. In the case of K. Electric, supra, also similar view was adopted and it was held that in case of two special laws, the special law which is latter in time would prevail. In both the above referred judgments reliance was placed upon the case of Syed Mushahid Shah, quoted above, passed by the Hon'ble Supreme Court of Pakistan. In the case of Syed Mushahid Shah the Hon'ble Apex Court, while extensively dealing with the issue, has observed that in case of conflict between two special laws the statute which is latter in time would prevail over the statute prior in time. In the instant matter it is an admitted fact that Section 80D is a latter provision of the law hence, in our view, would prevail over Section 26 of the repealed Ordinance. It would not be out of place to mention that in the Income Tax Act 1922 (repealed Act) also there was provision dealing with the taxability of Insurance business, which was Section 10(7) read with First Schedule to the Act.

23. Mr. Khalid Mehmood Siddiqui has also raised an issue that in case of any inconsistency among the laws the same should be resolved

in his favour. The answer to this proposition, in our view, has already been given by the Hon'ble Supreme Court in the case of Elahi Cotton Mills Ltd. vide para-41 of their decision, which reads as under:

41. It may be stated that non obstante clause in section 80-D is for the purpose of liability to pay minimum tax of half per cent on the annual turnover. This will exclude any provision of the Ordinance which may be inconsistent with it. But the same does not exclude the application of other provisions of the Ordinance which are not inconsistent with section 80-D.

24. Mr. Abbasi has also stated that a Corporation is a person falling under Section 2(32) of the Ordinance, hence the provision of Section 80D is applicable to it being a person. We find force in the contention raised by the learned counsel for the Department that the word "Corporation" though not defined in the Ordinance but is also considered to be a synonym of the "Company" and the word "Company" has also been defined under Section 2(16) of the repealed Ordinance, which would mean a body corporate formed by or under any law for the time being in force; since applicant (State Life Insurance Corporation) is a statutory entity, thus it would also fall within the definition of "person" and has a corporate personality; hence not absolved from the applicability of Section 80D of the Ordinance. It may be noted that this aspect with regard to Corporation being a person has also not been controverted by Mr. Siddiqui.

25. We, therefore, in the light of what has been stated above, are of the view that the Corporation is liable to pay tax on its turnover in respect of the incomes falling under its turnover, under the provision of Section 80D of the repealed Ordinance, and thus answer the questions raised in the instant ITRAs, with regard to applicability of

Section 80D of the repealed Ordinance, in all the years under consideration in Affirmative i.e. in favour of the Department and against the Corporation. All the instant ITRAs stand disposed of in the above terms.

Let a copy of this judgment be sent to the Registrar, ITAT, for doing the needful in accordance with law.

JUDGE

JUDGE

Karachi:

Dated: .11.2020.

(Tahseen, PA)