IN THE HIGH COURT OF SINDH, KARACHI

Income Tax Reference Application No. **74 of 2016**

Date	Order with signature of Judge

Present: ***Mr. Justice Muhammad Junaid Ghaffar***
Mr. Justice Agha Faisal

Applicant:	**The Commissioner Inland Revenue, Through Mr. Kashif Nazeer, Advocate**
Respondent:	**Dawood Islamic Bank Limited (Now Burj Bank).**
Date of hearing:	**09.04.2021.**
Date of Order:	**09.04.2021.**

O R D E R

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant has impugned Order dated 25.11.2015, passed by the Appellate Tribunal, Inland Revenue, Karachi in ITA No. 936/KB/2013 (Tax Year 2009) arising out of an amended assessment order under section 122(1)(5) of the Income Tax Ordinance, 2001, proposing the following questions of law:-

i. ***Whether under the facts and circumstances of the case the learned Tribunal was justified to delete the addition on account of interest as per market rates on the advances/disbursement to SSGC in the bank where there are common Directors in the respondents Bank and SSGC?***

ii. ***Whether under the facts and circumstances of the case the learned Tribunal was justified to confirm annulment instead of remanding back the case?***

2. Learned Counsel for the Applicant has read out the relevant finding of the learned Tribunal as well as of the Assessing Officer and submits that the forums below have not appreciated the law, as according to the officer the respondent had failed to charge interest on amounts disbursed to the associates while it paid profit on debt on the amount received from them; and lastly, per learned Counsel, the matter ought to have been remanded for an appropriate treatment instead of annulling the same.

3. We have heard the learned Counsel and perused the record. Though there were number of issues which were raised at the time of show cause notice and passing of order under s.122 of the Income Tax Ordinance, 2001; however, present Reference Application is only in respect of one question as above. The relevant finding of the Tribunal in this regard is as follows:-

> "7. The Department has not questioned he above findings of CIR(A) by filing any specific grounds against the impugned findings. It has also been noticed that addition has been made by the DCIR on some misunderstanding regarding status of SSGC and the amount withdrawn by it from the account / deposits held with the taxpayer bank. It has been explained by the AR that M/s. SSGC is a customer of the bank. However due to presence of a common director in both the companies they also enjoy the relationship of associates in terms of corporate law. As per the requirements of SECP law and international accounting standards the taxpayer bank was required to make disclosures in its audited accounts of all transactions with the associates including SSGC regarding deposits made by them with the bank and subsequent withdrawals by the SSGC / repayments by the bank to SSGC. It has further been explained by the learned AR that SSGC made deposits with the bank on which interest/mark up was paid by the bank at rate and on the terms as has been made to all other such customers. Subsequently SSGC, like any other customer decided to withdraw its deposits. Accordingly the amount deposited was repaid to SSGC. The deposits by the SSGC and repayment of that deposited amount by the taxpayer bank constitute normal banking transaction between a bank and its customer. *However since due to a common director the SSGC was an associate of the taxpayer bank the deposit and repayment had to be disclosed in the audited accounts as required under the SECP law, accounting standards and other relevant regulations. The learned DCIR under some misconception treated the repayment of the deposits of SSGC as loan advanced by the bank to SSGC without charging of interest/mark up and worked out the same as per formula adopted by him in the order u/s 122(1) to be treated as income chargeable to tax u/s 108/109 of the Ordinance. When confronted with this factual controversy / misconception and incorrect appreciation of factual position of the case, the learned DR/author of the order was unable to give satisfactory explanation to support the treatment meted out by him.* Under these circumstances the treatment meted out by the DCIR in the order u/s 122(1) find ourselves in disagreement while we approve the impugned finding and direct to delete the addition of Rs. 66,858,892/- made on incorrect appreciation of facts of the case. At the same time we also hold that there was no occasion to invoke Provisions of sections 108 and 109 in the respondent's case on this score. Department's appeal fails."

4. Perusal of the aforesaid finding reflects that apparently the Assessing Officer under some misconception treated the repayment of the deposits of SSGC as loan advanced by the bank to SSGC without charging of interest/mark up and worked out the same as per formula adopted by him in his amended assessment order under section 122(5) of the Ordinance by treating it as income chargeable to

tax under section 108/109 of the Ordinance; and he was confronted by the Tribunal with these factual aspect and his wrong treatment to such a transaction and was unable to give satisfactory explanation to support such treatment given by him in his Order. We have confronted the learned Counsel for the Applicant on this aspect of the matter and he has argued that in that case matter ought to have been remanded instead of annulling the amended assessment order. However, we are afraid this is not a correct approach. There isn't any question of law apparently in this matter, whereas, the Applicant has not been able to justify its treatment as above; hence, it appears to be merely a factual question and does not require interference by us in our Reference Jurisdiction. Accordingly, this Reference Application, being misconceived, is hereby dismissed in Limine.

Let copy of this order be sent to Appellate Tribunal Inland Revenue (Pakistan) at Karachi, in terms of sub-section (5) of Section 133 of Income Tax Ordinance, 2001.

J U D G E

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