

IN THE HIGH COURT OF SINDH AT KARACHI

(Extraordinary Reference Jurisdiction)

I.T.R.A. No. 297 of 2019

to

I.T.R.A. No. 302 of 2019

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi

Mr. Justice Zulfiqar Ahmed Khan.

20.09.2019:

Mr. S. Irshad-ur-Rehman, advocate for the applicant(s).

ORDER

1. Through instant Reference Applications, following common questions have been proposed by the applicant(s), which according to learned counsel for the applicant(s), are questions of law, arising from the combined impugned order dated 20.08.2019 passed by the Appellate Tribunal Inland Revenue of Pakistan, Karachi, in ITAs No.997/KB-2018 [Tax Year 2012], 998/KB-2018 [Tax Year 2013], 1411/KB-2018 [Tex Year 2014], 999/KB-2018 [Tax Year 2015], 1000/KB-2018 [Tax Year 2016], & 952/KB-2018 [Tax Year 2017] and requires opinion of this Court:-

“I. Whether in the facts and circumstances of the case the learned Tribunal-IR, having observed the findings of the Commissioner (Appeals) as erroneous and against the record, has legally erred in remanding the issue of determination of date of getting registration of the applicant under Sales Tax Act, 1990 within the meaning of clause (54A)(a)(c) part-IV, 2nd Schedule to the Income Tax Ordinance, 2001, to the Commissioner (Appeals)?

II. Whether in the facts and circumstances of the case the learned Tribunal-IR has legally erred in not deciding the grounds of invocation of section 122(5A) of the Income Tax Ordinance, 2001 by the ADCIR as maintained by the learned Commissioner (Appeals)?”

2. Learned counsel for the applicant, after having read out the proposed questions and the impugned order passed by the Appellate Tribunal Inland Revenue has submitted that the Appellate Tribunal Inland Revenue was not justified to remand the matter back to the Commissioner (Appeals) for deciding the date of registration in the case of the applicant(s), whereas, according to learned counsel, Commissioner (Appeals) has already recorded his finding in this regard, while ignoring the date of filing application for Registration by the applicant, whereas, benefit of SRO 333(1)/2011 dated 02.05.2011 has been declined. It has been further argued that question regarding legality of invoking the provisions of Section 122(5A) has also not been decided by the Appellate Tribunal.

3. From perusal of the impugned order passed by the Appellate Tribunal Inland Revenue in the instant References, it appears that, after having examined the contention of both the parties, particularly, the grounds of the applicant as detailed in para 15 of the impugned order passed by the Appellate Tribunal in the instant case, the Appellate Tribunal has been pleased to set-aside the order of Commissioner (Appeals) and has remanded the matter back to the Commissioner (Appeals) with certain directions to decide the issues raised in appeals including the issue relating to date of registration of the applicant(s), strictly in accordance with law. It will be advantageous to reproduce the relevant finding of the Appellate Tribunal as contained in Para: 13 to 17 of the impugned order, which reads as follows:-

“13. Perusal of record further revealed that the learned CIR(A) only revolved around interpretation of clause 45A Part IV of 2nd Schedule and he had to consider the contention of the appellant and documents and case laws and in the light of these documents he had to give proper findings that whether taxpayer is liable to get benefit of relief extended clause 45A Part IV of the 2nd Schedule of

the Income Tax Ordinance, 2001 and whether he wrongly submitted application for registration on 05.05.2011 read with SRO 333(I)/2011 dated 02.05.2011 and whether the department caused delay to process the application of the taxpayer but the CIR(A) totally failed and did not give any finding upon these points but he only interpreted clause 45A Part IV of the 2nd Schedule of the Income Tax Ordinance 2001 and he only gave observation that the taxpayer has been registered on 22.07.2011 and he did not get registered on 30.06.2011 therefore, he is not entitled to avail benefit of lower rate extended by clause 45A Part-IV 2nd Schedule of the Income Tax Ordinance 2001. The learned CIR(A) had to see whether the delay from sides of the department or from the side of appellant/taxpayer.

14. In this regard the learned CIR(A) had to give sound finding but perusal of orders shows that the CIR(A) has failed to even appreciate the contentions as well as grounds and annexed case law of the appellant and he only appreciated the contention of the department.

15. The contentions of the appellant/taxpayer are as under:-

- (i) That the appellant/taxpayer in order to avail benefit of clause 45 of Part IV 2nd Schedule of the Income Tax Ordinance read with SRO No. 333(I)/2011 dated 02.05.2011 has filed application for registration under Sales tax Act, with complete requirements of documents all steps for getting himself registration and after submitting requisite documents nothing was under control of appellant for getting registration long cut off date 30.06.2011.
- (ii) An after submitting request of registration application and the requisite documents nothing was under control of appellant/taxpayer for getting registration long before the cut off date 30.06.2011.
- (iii) That Physical Verification made by the department and its own convenience submitted dated 28.06.2011.
- (iv) Respondent/department issued Sales Tax Registration on 22.07.2011 and submission of

Physical Verification Report to the FBR on 28.06.2011.

16. As the above mentioned grounds taken by the appellant/taxpayer in the appeal before the learned CIR(A) were not taken into consideration and also failed to give proper findings upon the issue and the CIR(A) has erred in giving findings that the appellant got registration on 22.07.2011 and was not get registered on 30.06.2011 but the record shows that the appellant submitted application for registration on 05.05.2011. It was the department that at its own convenience conducted physical verification of the unit and or supply physical verification to the FBR and the FBR issued registration certificate on 22.07.2011.

17. Therefore, keeping in view the above observation, we are of the opinion firm that matter is remanded back to the learned CIR(A) with direction to pass a speaking order and give proper finding upon this issue after affording fair opportunity to both the parties.”

4. Perusal of hereinabove specific finding as recorded by the Appellate Tribunal shows that order of Commissioner (Appeals) has been set-aside, whereas, the basis of declining the benefit of SRO 333(1)/2011 dated 02.05.2011 and invoking provisions of Section 122(5A) of the Income Tax Ordinance, 2001, has also been declared to be illegal. Matter has been remanded back with specific directions to the CIT (Appeals), whereas, presently, there is no adverse order or decision by the Appellate Tribunal which may give rise to filing reference before this Court. We are not inclined to interfere with the impugned order of remand passed by the Appellate Tribunal in the instant case, as it does not give rise to any question of law. Moreover, against an order of remand reference does not lie. Reliance in this regard can be placed on the cases reported as ***The Commissioner of Income Tax, Central Zone ‘B’, Karachi v. Messrs Electronic Industries Ltd., Karachi (1988 PTD 111)***, ***The Commissioner of Income Tax West Zone, Karachi and another v. Messrs Khairpur***

Textile Mills Ltd. and others (1989 PTD 500) and Messrs E.M. Oils Mills and Industries Ltd. through Director v. Commissioner of Income Tax, Audit Division II, Companies III, Karachi (2011 PTD 2708).

5. Accordingly, we do not find any substance in the instant Reference Applications, which is devoid of any merits, therefore, dismissed in limine alongwith listed application.

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Nadeem/A.S.