

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Income Tax Reference No. 167 of 1997

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of main case

07.02.2023.

Rana Sakhawat Ali, Advocate for the applicant

Ms. Saima Anjum advocate holds brief for Mr. Farogh Naseem,
Advocate for the respondent

This Income Tax Reference Application has been sent by the Income Tax Appellate Tribunal, Karachi, in terms of Section 136(1) of the Income Tax Ordinance, 1979, by way of its order dated 31.11.1991 passed in I.T.A No.214 to 215/KB of 1987-88 (*R.A. No.305/HQ of 1990-91-Assessment Year 1983-84*) & (*R.A. No.306/HQ of 1990-91-Assessment Year 1984-85*), and was admitted for regular hearing on 06.02.2009. Thereafter the matter could not be decided and on 24.01.2023 in presence of the respective counsel the following order was passed: -

“This Income Tax Reference was admitted for regular hearing on 06.02.2009 on one of the question referred by the learned Tribunal which reads as under:

“Whether on the facts and under the circumstances of the case the learned Tribunal was justified in holding that the ITO is not empowered in curtailing the period of 30 days for compliance of notice u/s 65.”

On perusal of the Tribunal’s order whereby the reference has been sent on the above question, it appears that the controversy as raised in this matter stands already decided vide Judgment reported as **1991 PTD 217** (H.M. Abdullah vs. Income Tax Officer, Circle-Vi, West) in favour of the department and against the respondent.

Mr. Kafeel Kafeel Ahmed Abbasi, advocate for the applicant at this juncture submits that he needs time to assist the court as after his appointment as Additional Advocate General Sindh he has not been appearing for the Department.

The matter pertains to 1997, therefore, reluctantly adjourned to 07.02.2023, when counsel for the applicant as well as respondent shall come prepared to assist the court after going through the above Judgment reported as **1991 PTD 217** (H.M. Abdullah vs. Income Tax Officer, Circle-Vi, West)”

The question as proposed and sent by the learned Tribunal apparently stands decided in the aforesaid judgment of **H.M. Abdullah (supra)** by a learned Division Bench of this court. The relevant finding is as under: -

“The learned counsel then contended that under the garb of section 65 the petitioner cannot make fishing inquiries. The question of fishing inquiries does not arise as in the notice under section 65 specific instances have been quoted and queries have been made relating to those points. The learned counsel then contended that notice under section 65 is incompetent as under Form IT 191 in which it has been issued prescribes a period of 30 days for submitting the reply but respondent No.1 had given only 5/6 days, and therefore, the entire proceedings is illegal. In this regard the learned counsel has referred to several judgments under section 24 of the Sales Tax Act where notices in Form ST 15 were issued which provided a period of 35 days for submitting the reply but as it was not complied with, the assessment was struck down. Reference has been made to (1983) 48 Taxation 44 (sic), 1990 P T D 288 (sic), 1988 P T D 145 (sic). In all these cases question of notice under Form S.T. 15 of Sales Tax Act was under consideration. Such form of notice was prescribed by the Central Board of Revenue under its Rule-making powers. The learned counsel has not been able to show any Rule under which Form 191 was prescribed by the C.B.R. fixing a period of 30 days for submitting reply to the notice under section 65. This Form-191 may have been adopted by the Department but both the learned counsel have not been able to show any authentic or legal backing from the statute or the Rules framed by the C.B.R Therefore, breach of such form is not sufficient to strike down the proceedings”

In the aforesaid judgment it has been held by a learned Division Bench that even if there is any violation of the provisions of section 65 of the Income Tax Ordinance 1979, in respect of the period provided therein or the same being curtailed by ITO, is not *ipso-facto* a ground to strike down or annul the entire proceedings including the assessment order. Since the question already stands answered in favour of the department and against the assessee, whereas, on perusal of the record including the pleadings available before us, no case for exception is made out; hence, we, while following the aforesaid judgment answer the proposed question accordingly in favor of the Applicant / Department and against the Respondent / assessee.

Let copy of this order be sent to the Income Tax Tribunal (now Inland Revenue Tribunal) in terms of Section 136(5) of the Income Tax Ordinance, 1979 (since repealed).

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