

## IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Zulfiqar Ahmad Khan.

### Income Tax Reference Application Nos.99 to 104 of 2015

**Applicants:** B.P Pakistan Exploration and Production Inc. Through Mr. Ali Almani, Advocate

**Respondents:** Commissioner Inland Revenue, Zone-III, LTU, Karachi  
**(None present)**

**Date of hearing:** 06.11.2023  
**Date of order:** 06.11.2023

### ORDER

**Muhammad Junaid Ghaffar, J:** None present on behalf of the department nor any intimation received. On the other hand, learned Counsel appearing on behalf of the Applicant submits that all these Income Tax Reference Applications can be disposed of and remanded to the Appellate Tribunal Inland Revenue at Karachi while answering Question (d)<sup>1</sup> in favour of the Applicant, as according to him, the Supreme Court in the case of **Farrukh Raza Sheikh**<sup>2</sup> has been pleased to hold that the Appellate Tribunal, Inland Revenue cannot exercise its' powers under Rule 22(1) of the Appellate Tribunal Inland Revenue Rules, 2010 inasmuch as they have been declared as *ultra vires* to the very provisions of the Income Tax Ordinance, 2001. He further submits that it has been held that the Tribunal, at the most, can proceed ex-parte after any party is found to be in default; but cannot dismiss the appeal for non-prosecution. The relevant finding of Supreme Court in the above judgment reads as follows: -

“9. Section 132(2) of the Ordinance is far more detailed, explicit, direct and clear compared to Section 33(4) of the Income Tax Act, 1922. It is therefore underlined that the logic and rationale behind section 132(2) of the Ordinance and the consistent jurisprudence evolved over the years around Section 33(4) of the erstwhile tax law is to promote and support an efficient tax administration and encourage smart tax governance in the country. Re-engineering the litigative process and procedure by removing

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<sup>1</sup> (d) Whether the ATIR could have dismissed the Applicant's appeal without granting it a hearing on the merits of the case?

<sup>2</sup> Farrukh Raza Sheikh Vs. The Appellate Tribunal Inland Revenue and others (2022 SCMR 1787)

dilatory steps in the dispute resolution mechanism is a welcome development. The order of dismissal of appeal on the ground of default, gives rise to a new set of litigation on a technical issue totally unrelated to the tax controversy in hand. Any further proceedings against the order of dismissal is a futile exercise for a tax collector, as well as, the tax payer, as the real tax dispute goes unattended till such time that the parties settle the issue of dismissal in default from the highest court in the land. The parties if successful have to start all over again before the Tribunal on merits. Section 132(2) avoids this double exercise and mandates that the appeal be decided on merits so that any further proceedings before a higher forum lead to a decision on merits. These unnecessary delays in tax dispute resolution seriously impair the overall tax governance in the country, which rests on efficient tax management and speedy tax collection. Section 132(2) of the Ordinance has no appetite for delays and penalizes the indolent party by empowering the Tribunal to proceed ex-parte on the basis of the available record. It is also to be noted that section 132(2) does not encourage adjournments by the parties. The Tribunal can proceed ex-parte if any of the parties is in default on the date of hearing. "In default" means absence of a party without a sufficient cause on any date fixed for hearing.

10. For the reasons elaborated above, we hold and declare that Rule 22(1) of the Rules to the extent whereby it allows the Tribunal to dismiss an appeal in default is ultra vires section 132(2) of the Ordinance and is, therefore, struck down to that extent. Consequently, the appeal of the petitioner shall be deemed to be pending before the Tribunal and shall be decided by the Tribunal within a period of three months from the receipt of this judgment.”

2. In view of the above, proposed Question (d) is answered in favour of the Applicant and against the department. The common Order dated 09.12.2014 impugned in all listed ITRA's in respect of different tax-years stands set-aside and matters stand remanded to the Appellate Tribunal Inland Revenue, Karachi for deciding the same in accordance with law.

3. Let copy of this order be issued to the Appellate Tribunal, Inland Revenue, Karachi in terms of Section 133(5) of the Income Tax Ordinance, 2001. Office to place copy of this order in the connected ITRAs.

**J U D G E**

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