

'ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
Income Tax Reference Application Nos.342 & 343 of 2024

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Date	Order with signature of Judge
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**Hearing of case**

- 1) For hearing of CMA No.2523 of 2024
- 2) For regular hearing

**10.12.2024**

Syed Amin-u-Din, Advocate holds brief for Mr. Zia Ahmed, Advocate for Applicant

Mr. Irshad-ur-Rehman, Advocate for Respondent

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Through these Reference Applications filed under Section 133 of the Income Tax Ordinance, 2001, ("**Ordinance**") the Applicant has impugned Order dated 31.07.2024 passed by the Commissioner (Appeals-VI), Karachi, under Section 129(1) ibid proposing *various* questions of law; however, for the present purposes, the following questions of law are relevant and reads, as under: -

- A) Whether the Commissioner's judgment, delivered on 31.07.2024, can be considered legally sound if it fails to address and consider key facts and arguments that were presented and acknowledged during the proceedings?
- B) Whether a judicial order that does not explicitly demonstrate that the Court has applied its mind to the issues involved in the case can be deemed valid, in light of the principles established by the Supreme Court of Pakistan in *\*Mollah Ejahar Ali Vs. Government of East Pakistan (PTD 1970 Supreme Court 173)\** and *\*Government of Sindh Vs. Muhammad Juman and another (2009 SCMR 1407)\**?
- C) Whether the omission of necessary reasoning and discussion in the learned Commissioner order violates the requirements of section 24-A of the General Clauses Act, which mandates that an authority must pass orders reasonably, fairly, justly, and with the provision of reasons?

On 12.11.2024 after briefly hearing learned Counsel for the Parties, we had passed the following order:-

“On perusal of the order passed by the Assistant/Deputy Commissioner Inland Revenue, Unit-I, Range-IV, Zone-II, TRO-I, Karachi, it reflects that in his order passed under Section 122(1) of the Income Tax Ordinance, 2001 no reason whatsoever has been assigned to pass the order and to create a liability on the applicant. Similarly, when the applicant impugned the said order before the Commissioner Appeals the Commissioner Appeals has also done the same and has dismissed the appeal with one line order/reasoning. Counsel for the department has been confronted with directions to seek instructions from the concerned Commissioner as to how such order can be sustained and attended to by this Court under its reference jurisdiction. Adjourned to 10<sup>th</sup> December, 2024. Interim order passed earlier to continue till next date of hearing.”


Today, learned Counsel for the Department, under instructions submits that the matter may be remanded to the concerned Authority for deciding the same afresh; however, before such request could be examined, it has been noticed that the assessing officer as well the Commissioner (Appeals), both have failed to pass an appropriate reasoned order. It appears that the Applicant was confronted with a show cause notice under Section 122(9) of the Ordinance that 1% tax is payable as ‘turnover tax’ on the product in question, whereas Applicant’s case is that the rate of said tax should be 0.2% as the product in question falls within ‘Fast Moving Consumer Goods’. The Applicant furnished a detailed reply to the said notice; however, the Assessing Officer did not bother to give any reasoning in passing an adverse order against the Applicant and has just observed as follows: -

**FBR** Federal Board of Revenue  
Revenue Division - Government of Pakistan **IRS** Inland Revenue Service

122(1) (Order to amend Self or Best Judgment or provisional assessment)

**Name:** ABBAS AHMED  
**Address:** PLOT NO B-27, SITE SUPER, HIGHWAY,  
Karachi West Site Town  
**Contact No:** 00923332259380

**Registration No** 4210108754963  
**Tax Year :** 2017  
**Period :** 01-Jul-2016 - 30-Jun-2017  
**Medium :** Online  
**Due Date :** 13-Jun-2023  
**Document Date** 13-Jun-2023

  
100000153464425

Quote  
NOTICE U/S 122(9) OF I.T ORD 2001

On behalf of our above client and with reference to your notice u/s. 122(9) of I.T Ord. 2001, having sercode No. 100000083697603 dated 07-10-2022, regarding the charging of turnover tax on the alleged ground that the taxpayer has failed to charge turnover tax @ 1% is not proper. In this connection it is brought to your kind notice that the taxpayer is a manufacturer cum-distributor of fast moving consumer goods (RUSK) hence not liable to pay turnover tax @ 1%, and the rate of tax on fast moving consumer goods is 0.2% which comes to Rs 76,894/- whereas the normal tax liability comes to Rs 137,000/- which is much higher than the turnover tax. In the view of the above facts, it is evident that the order passed is according to law and does not require any rectification.

Under the circumstances explained above we request your goodself to please withdraw the notice under reply.  
Thanking you,  
Yours faithfully,  
Unquote

Meanwhile, in pursuance of Commissioner-IR, Zone-II, RTO-I's office order C.No. CIR/Admn-I(T&P)/Z-II/2022-23/2774 dated 19-01-2023, your case has been transferred to the undersigned. Jurisdiction assumption notice was issued by undersigned through IRIS on 03-02-2023 for compliance on 10-02-2023. The taxpayer's explanation regarding confronted issue were found un-satisfactory, hence, taxpayer is liable to pay tax 1% as mentioned in Division IX. //

In light of the facts of the case, minimum tax u/s 113 of the Income Tax Ordinance, 2001 is hereby charged at 1% of the turnover declared by the taxpayer in his return of income for tax year 2017.

**COMPUTATION OF TAX:**

i.	Declared Turnover	Rs. 38,446,748/-
ii.	Tax payable us 113 @ 1%	Rs. 384,467/-
iii.	Less: Admitted tax	Rs. 202,335/-
iv.	Balance Tax Payable	Rs. 182,132/-

Assessed as above. Issue copy of order and demand notice accordingly.

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RTO-I KARACHI, TAX HOUSE SHARAH E KAMAL ATA TURK KARACHI




“The taxpayer’s explanation regarding confronted issue were found un-satisfactory, hence, taxpayer is liable to pay tax 1% as mentioned in Division IX.”

From perusal of the aforesaid one line finding, it reflects that the Assessing Officer has neither given any reasoning nor has referred to any provision of law based on which the Applicant has been asked to pay turnover tax @ 1%.

The Applicant being aggrieved approached the Commissioner (Appeals) and through impugned order, the Commissioner (Appeals) has dismissed the appeal in the following terms: -




**Federal Board of Revenue**  
Revenue Division - Government of Pakistan



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129(1) (Order to Confirm/Modify/Remand-Back/Annual Appeal Application)

<p><b>Name:</b> ABBAS AHMED <b>Address:</b> PLOT NO B-27, SITE SUPER, HIGHWAY, Karachi West Site Town <b>Contact No:</b> 00923332259380</p>	<p><b>Registration No</b> 4210108754963 <b>Tax Year :</b> 2017 <b>Period :</b> 01-Jul-2016 - 30-Jun-2017 <b>Medium :</b> Online <b>Due Date :</b> 31-Jul-2024</p>
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100000202381072

**Document Date** 31-Jul-2024

Payer has failed to establish his version.

13. The learned Assistant Commissioner-IR has framed the assessment in haste without affording proper opportunity of hearing. The last date of compliance was 11.02.2021 and the impugned order was passed on 13.06.2023 without confronting the appellant with the rebuttal of the stances of the appellant. Therefore the same is amount to condemning the taxpayer without providing him reasonable opportunity of being heard which is not tenable in the eyes of law.

14. The order passed is totally vague, baseless & non speaking order, hence not maintainable

15. That the impugned order has been passed in mechanical and in an arbitrary manner which is liable to be cancelled/annulled.

16. The order passed by the learned Assistant Commissioner IR suffers from substantial legal and factual infirmities and liable to be cancelled.

17. That there are so many other faculta and law points which the appellant will raise at the time of arguments. The appellant is being burdened with heavy amount of tax without any reason. The appellant is being made victim of crime that he has not committed.

18. The appellant crave permission to add, alter amend or substitute any ground of appeal at the time of hearing.

Call notice were issued and served upon the department. No one entered appearance on behalf of the department. No one entered appearance on behalf of the department. Statutory call notice u/s 129 of the Ordinance was issued and served upon the appellant. In response thereto Mr. ArshadSiddiqui, AR, attended on the behalf of appellant side & argued the case.

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Having gone through the submitted written arguments and verbal submissions during the course of hearings by the AR, and the impugned order, I proceed to record my findings on the issues herein under as follows:

Since Manufacturer of RUSK does not fall in the category of FMC as this facility of reduced turnover tax is only available to the distributors only. I have also gone through contention of AR on legal plane which does not carry weight. }

In view of above impugned order is confirmed.

The appeal is disposed off in the manner as indicated above.

Attributes	
Attribute	Value
Decision on Appeal	Confirm

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**“Since Manufacture of RUSK does not fall in the category of FMC as this facility of reduced turnover tax is only available to the distributors only. I have also gone through contention of AR on legal plane which does not carry weight.”**

From perusal of the aforesaid finding again it reflects that neither any reasoning has been assigned nor the law in question has been referred to saddle the Applicant with tax @ 1% as against the Applicant’s claim @ 0.2% tax. The authorities are required to act in a judicious manner with a fair and justifiably reasoned orders as Section 24A of the General

Clauses Act, 1897, reiterates the principle that statutory power is to be exercised reasonably, fairly, justly and the advancement of the purposes of the enactment and further clarifies that an executive authority must give reasons for its decision and any action by such authority which is violative of the said principle is liable to be struck down<sup>1</sup>.

It will not be out of place to mention that pursuant to the Finance Amendment Act, 2024 and thereafter through Finance Amendment Act, 2024 such orders of the Commissioner (Appeals) are now assailable by way of Reference Application under Section 133 of the Ordinance before this Court to consider not only a question of law, but so also questions of fact. However, we are compelled to observe that this, resultantly, has only burdened the High Court(s) with more and more tax matters. The Officers of the Department, including the Commissioner (Appeals), as a matter of routine are passing orders in a slipshod manner without even discussing the law or facts of a particular case. Instead, the entire response / grounds are reproduced in their orders and then the contention is rejected by way of compendious / brief orders.

In the instant matter both the officers below have failed to give any reasoning; nor have determined any questions of law or even facts, based on which this Court can answer the proposed questions. This nullifies the idea of providing a direct Reference before this Court against orders of Commissioner (Appeals) as instead of reducing litigation, it has increased the pendency of tax matters. Such orders are being remanded to the assessing officers starting a fresh round of cumbersome proceedings and is not helping the Court or the litigants, including the tax department, in any manner for swift disposal of like matters.

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<sup>1</sup> Muhammad Amin Muhammad Bashir Limited v Government of Pakistan (2015 SCMR 630); Muhammad Ashraf Tiwana v Pakistan (2013 SCMR 1159); Government of Pakistan v Farheen Rashid (2011 SCMR 1); Habibullah Bhutto v Collector of Customs (2011 SCMR 1504); Fasihuddin Khan v Government of Punjab (2010 SCMR 1778); United Woolen Mills Limited Workers Union v United Woolen Mills Limited (2010 SCMR 1475)

It is high time for FBR and its legal Division(s) to look into this and issue instructions as well as educate / train the concerned Officers in the adjudication and Appellate hierarchy, to pass well-reasoned orders in line with Section 24A of the General Clause Act, 1897 and the law settled by the Courts as above, after taking into consideration all factual as well as legal aspects of a case so that the High Court(s) can answer the proposed questions of law and facts in an apt manner while exercising its Reference jurisdiction under section 133 of the Ordinance.

In view of the above, the orders passed by the Commissioner (Appeals) as well as the Assessing Officer are hereby **set-aside**; these Reference Applications are **allowed**; and the matter stands remanded to the Original Authority, who shall decide the same with a reasoned and a speaking order, after attending all issues so raised by the Applicant in accordance with law and with an opportunity of hearing to the Applicant.

Let a copy of this order be issued to Chairman, FBR as well as Member (Legal), Inland Revenue, FBR for information and necessary compliance. Office to place a copy of this order in connected ITRA.

**JUDGE**

**JUDGE**