

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**I.T.R.A. No. 418 of 2010**

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Date

Order with signature of Judge

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For hearing of main case.

**06.03.2025.**

Mr. Qaim Ali Memon, Advocate for the Applicant.

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On the last date of hearing, following order was passed:

“None present on behalf of Respondent; whereas, record reflects that twice they have been served; but nobody has affected appearance. In view of such position, the Respondent stands duly served and shall be proceeded exparte. Counsel for the Applicant shall assist the Court on the next date.

To come up on 06.03.2025.”

Today, we have heard the Applicant’s Counsel and perused the record. It appears that the Applicant has impugned order dated 29.04.2010 passed in ITA No. 125/KB/2010 by the Appellate Tribunal Inland Revenue (Pakistan) Karachi, proposing the following questions of law:-

- i) Whether on facts and in the circumstances of the case the learned ATIR has erred in holdup that Taxation Officer failed to confront the taxpayer regarding his disagreement for making such huge adhoc addition of Rs.12,746,733/- whereas the Taxation Officer has confronted regarding fall in G.P. rate vide notice u/s. 122(9) dated 16.12.2008.
- ii) Whether on acts and in the circumstances of the case the learned ATIR was justified in deleting the amount of Rs.12,746,733/- holding at as the adhoc addition was made on fall of G.P. and not on adhoc basis.

The Tribunal while allowing the appeal of the Respondent has observed as under:-

“9. I considered the arguments of the learned AR of the taxpayer as well as the counter arguments of the DR. Besides, I also considered the reason recorded by the assessing officer in the order and found that the contention of the AR is correct as the assessing officer failed to confront the taxpayer/appellant regarding his disagreement making such a huge adhoc

addition of Rs.12,746,733/- Which is not tenable in the scheme of the law which required specific pin pointing of any defect in respect of which addition or disallowance is to be made. Hence, I hereby delete the adhoc addition of Rs.12,746,733/- being unlawful and made without confronting the taxpayer/appellant, on specific defects.”

At the very outset Applicant's Counsel has been confronted as to the above order inasmuch as on perusal of the record it clearly reflects that the Applicant / Department had never confronted the Respondent with any specific details as to the above issue, whereas copy of show cause notice has also not been placed on record. However, in the order of the Assessing Officer show cause notice has been reproduced and the relevant allegation is as under:-

Quote

“Gross profit,

- (1) your G.P. declared FOR 2002-2003 IS 9.56% AS COMPARED THIS YEAR'S G.P. declared at 1.50%. This fall in G.P. has not been justified by you, you were required to reconcile credits in your bank Al-Habib account. With you have reconciled as under:

In response to the above objection, the Respondent replied as under:-

“As regard the decline in GP rate as compared to last year we wish to submit the nature of our client business activity is on an adhoc basis. Our client is not producing any single item/production on regular basis. Our client undertake fabrication of item against tendering. Every item is a new job assignment. During the year under consideration our client had completed an order from M/s. People's Steel Mills for fabrication of Screw Couplings for Railways. Our client had not produced this item before and the quality standards for this item being safety equipment were very stringent. Hence, for producing first batch of such a high quality item our client had incurred huge cost of developing basic production requirement. Since that huge expenditure was made on the basis of M/s. People's Steel Mills assurance that regular order would be forthcoming at increased prices, but unfortunately this scheme was not materialized.

Please note that excluding the job of Screw Coupling our client's GP rate for year under consideration is 9.21% which is almost equal to the GP of 9.56% for the last year. For your perusal and record the break-up of the same is given as under:

However, such response of the taxpayer / Respondent was discarded without any further inquiry as to the explanation and incurring of business losses. Since the Assessing Officer had failed to confront the Respondent with any specific allegation and details, we do not see any reasons to interfere with the finding of the learned Tribunal, whereas even otherwise the proposed questions are not questions of law but questions of facts which already stand decided by the learned Tribunal.

In view of such position, we need not answer the proposed questions, hence, the Reference Application stands dismissed. Let copy of this order be issued to the Appellate Tribunal, Inland Revenue as required under the Income Tax Ordinance, 2001.

**ACTING CHIEF JUSTICE**

**J U D G E**

Nasir/