

IN THE HIGH COURT OF SINDH AT KARACHI
I.T.R.A. No.193 of 2012

Date

Order with signature of Judges

Present:

Mr. Justice Aqeel Ahmed Abbasi

Mr. Justice Muhammad Junaid Ghaffar

For Katcha Peshi

05.09.2013.

Mr. Muhammad Siddiq Mirza, advocate for the applicant
Mr. Mazhar Jafri, advocate for the respondent.

ORDER

Aqeel Ahmed Abbasi, J:- Through instance reference application, the applicant has proposed the following question of law, which according to learned counsel arise from the impugned order passed by the Appellate Tribunal Inland Revenue (Pakistan) Karachi.

“Whether on the facts and circumstances of the case the learned Appellate Tribunal Inland Revenue was justified to remand back the matter regarding disallowance made under section 67 of expenses related to dividend income with the instructions to pass fresh order in light of Hon’ble Sindh High Court of Pakistan decision cited as 104 Tax 313?”

2. Learned counsel for the respondent at the very outset states that the question proposed through instant reference application does not arise from the order passed by the learned Tribunal, as according to him, the learned Tribunal has only followed the judgment of Division Bench of this Court in the case of Commissioner (Legal) Inland Revenue v. EFU General Insurance Ltd. (2011) 104 TAX 313, hence no question of law arises to be answered by this Court.

3. Conversely, learned counsel for the respondent states that though the proposed question of law has already been answered by a Division Bench of this Court in the aforesaid judgment, and the subject controversy in the instant reference is covered by the decision in the aforesaid judgment, however, since the department has filed C.P.L.A. No. 570-K to 572-K, 621-K to 623-K & 645-K to 647-K of 2011 against said judgment, wherein leave has been granted, therefore, instant reference application may be disposed of in the similar terms, whereafter applicant may file leave to appeal before the Hon'ble Supreme Court to maintain uniformity in their legal instance.

4. We have heard both the learned counsel, perused the question proposed in the instant reference application and the judgment of Division Bench of this Court as well as the leave granting order of Hon'ble Supreme Court. It appears that the question proposed in the instant reference application has already been answered by a Division Bench of this Court in the aforesaid judgment which has been assailed by the department by filing leave to appeal before the Hon'ble Supreme Court, wherein leave has been granted, however, the operation of the judgment of Division Bench of this Court as referred to hereinabove has not been suspended. Learned counsel for the applicant has prayed for the disposal of the instant reference in the terms of the decision of division bench of this Court in the case of Commissioner Inland Revenue, Karachi v/s EFU General Insurance Ltd. Accordingly, we would, therefore, answer the question raised in the instant ITRA in affirmative i.e. against the department and in favour of the assessee.

Accordingly, instant reference application is disposed of in the above terms.

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