

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application No. 99 of 2024

Date

Order with signature of Judge

HEARING OF CASE / PRIORITY.

- 1) For orders on office objection.
- 2) For hearing of main case.
- 3) For hearing of CMA No. 381/24.

14.05.2025.

Mr. Umer Ilyas Khan, Advocate for Applicant
Mr. Zohaib Korai, Advocate for Respondents.

Mr. Zohaib Korai, Advocate has filed Vakalatnama of Mr. Khalid Mahmood Rajpar, Advocate on behalf of Respondent, which is taken on record.

Through this Reference Application, the Applicant has impugned Order dated 19.12.2023 passed in Customs Appeal No. K-788 of 2014 by the Customs Appellate Tribunal, Bench-I at Karachi, proposing various questions of law; however, perusal of the aforesaid order of the Tribunal, it appears that the Tribunal has not dilated upon the facts nor on law and has passed the order in a slipshod and perfunctory manner by affirming the observations of the Additional Collector of Customs in the following manner:-

“04. The order of the Additional Collector of Customs (Adjudication-II), Karachi is well reasoned and encompasses all the issues raised before him. I am of the candid view that the Appellant is failed to bring / produced any new evidence, decision or order of the superior courts in support of their stance and on other hand Respondent successfully defended charges levelled in the show cause notice and Order in Original.

05. That in the wake of above, I am of the firm view that order passed by the Additional Collector of Customs (Adjudication-II), Karachi needs no interference. I do not find any cogent, plausible reason and merits to disturb the above cited order.”

This issue of such orders of the Tribunals have been dealt with and set aside by us in **ITRA Nos. 384 & 385 of 2023**

(Cyan Limited v. Assistant / Deputy Commissioner and another) in the following terms:-

“Through these Reference Applications, the Applicant has impugned Order dated 20.11.2023 passed in ITA No. 1402/KB/2017 (Tax Year 2014) and ITA No. 1347/KB/2021 (Tax Year 2014) by Appellate Tribunal Inland Revenue at Karachi, proposing various questions of law; however, at the very outset, we have perused the findings of the Tribunal which reads as under:-

“4. We have heard the learned representatives of both the parties and have perused the relevant record of the case which confirms that both appeals have been filed on frivolous and baseless grounds as the points raised in the appeals have been eloquently addressed in the impugned orders at length. The learned CIR(A) in his order dated 29.9.2017 on pages 7-12 held a detailed discussion on all the grounds raised in instant appeal. Similarly, In respect of order u/s. 221, the learned CIR(A) in her order dated 23.9.2021 rejected application for rectification on the basis of the fact that contention of learned AR regarding non-confrontation of the issue of disregarding loss of Rs.192,484,168/- by learned officer as well as non-adjudication of ground No. 6 were false and frivolous. She reproduced the relevant portions of the impugned orders (on page 3/4) to prove the fact that objections raised had no legs to stand. Since the learned AR could not raise any objection on the treatment of learned CIR (A) on appellant's objections, warranting adjudication from this Forum, it will be sheer wastage of time to either reproduce the detailed observations of the learned CIR (A) recorded in the impugned orders or explain the relevant provisions of law to rebut objections of the learned AR of the appellant, which again will be a repetition as the same has been done by the learned CIR(A). Findings of learned CIR(A) in both the orders were found well in accordance with law requiring no interference by us, as the learned AR could not point out any such infirmity in terms of facts or law warranting our interference. With respect, these appeals appear to have been filed just for the sake of filing appeals having no substance in objections raised and such tendency needs to be discouraged resulting in wastage of time and resources of this forum the appellant and the revenue.”

From perusal of the aforesaid order of the Tribunal, it appears that the Tribunal has not dilated upon the facts nor on law and has passed the order in a slipshod and perfunctory manner by affirming the observations of the Commissioner (Appeals). Such an approach is not only incorrect and not appreciable; but is at the same time, a burden on this Court. Time and again such matters are to be remanded due to such approach of the Tribunal, which amounts to sheer wastage of this Courts time and also burdens the department as well as Taxpayers with additional costs for no fault of theirs. Moreover, per settled law, the highest authority for factual determination in tax matters is the Tribunal¹; therefore, the Tribunal is required in law to determine the facts finally so that none of the parties are prejudiced in further proceedings including Reference Applications before this Court which are to be decided only on questions of law arising out of the order of the Tribunal. Such an exercise of final determination of facts can only be done by the Tribunal when the matter is decided by way of a reasoned order and not by merely affirming the observations of the lower forum(s). In the instant matter, Tribunal's observation do not fulfil the minimum requirements of passing of orders in accordance with law. Time and again we have come across orders passed by the Appellate Tribunal

¹ Commissioner Inland Revenue v RYK Mills Lahore; (SC citation- 2023 SCP 226); Also see Commissioner Inland Revenue v. Sargodha Spinning Mills, (2022 SCMR 1082); Commissioner Inland Revenue v. MCB Bank Limited, (2021 PTD 1367); Wateen Telecom Limited v Commissioner Inland Revenue (2015 PTD 936)

Inland Revenue, whereby, instead of recording its independent findings and or reasoning, the observations of the lower forums including the Commissioner (Appeals) are being affirmed on the ground that they are correct and in accordance with law and does not require any interference. The Tribunal is not supposed to decide the Appeals in such manner; but instead, must do it on its own and not in a stereo type of manner as has been done in this case. The Tribunal shall remain careful in future as otherwise we may be compelled to direct the Ministry of Law and Justice to initiate appropriate proceedings against such Members of the Tribunal who are repeatedly passing such orders.

In view of the above, we are left with no choice but to set-aside the impugned order and remand the matter to the Tribunal to decide the same afresh and pass a reasoned order after affording opportunity of being heard to the parties. Ordered accordingly. Let copy of this order be sent to Appellate Tribunal Inland Revenue (Pakistan) at Karachi, in terms of sub-section (5) of Section 133 of Income Tax Ordinance, 2001, and the Tribunal's office shall place the same before all Members of the Tribunal. Office to place copy of this order in connected ITRA.

A copy of this order shall also be issued to Ministry of Law and Justice for information and necessary action, if any.”

Accordingly, in view of the above observations in **ITRA Nos. 384 & 385 of 2023 (Cyan Limited v. Assistant / Deputy Commissioner and another)**, the impugned order of the Tribunal cannot be sustained and is liable to be set-aside and matter stands remanded to the Tribunal to decide the same afresh and pass a reasoned order after affording opportunity of being heard to the parties. Ordered accordingly. Let copy of this order be sent to the Customs Appellate Tribunal at Karachi in terms of sub-section (10) of Section 196 of the Customs Act, 1969.

ACTING CHIEF JUSTICE

JUDGE

Ayaz