ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI

Income Tax Reference Application Nos. 51, 52, 53, 54 & 55 of 2016

Date

Order with signature of Judge

Hearing of case.

For hearing of main case.

<u>11.08.2025.</u>

Mr. Faheem Ali Memon, Advocate for Applicants.

Mr. Hamza Waheed, Advocate along with Mr. Sami-ur-Rehman, Advocate for Respondents.

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

"At the very outset, learned counsel for the Applicant department has referred to the order passed on 16.10.2017 and submit that the issuance in hand is already covered a judgment of this Court in the case of *Wazir Ali Industries Ltd. V. ATIR, Karachi [2012 PTD 405]* and when confronted Respondent's Counsel needs time to assist the Court. He is directed to come prepared on the next date, as apparently the Tribunal has failed to appreciate the law already settled by this Court in the aforesaid judgment.

To come up on 11.08.2025. Office is directed to place copy of this order in the connected matters."

Today, learned Counsel appearing for the Respondents submits that the case of *Wazir Ali Industries* (supra) is distinguishable since in the instant matter it is Section 156A of the Income Tax Ordinance, 2001 which is applicable and not Section 156 (ibid); and therefore, no exception can be drawn to the finding of the Tribunal in question. He submits that it is not a case of any prize offered by the Respondent for promotion of sales; and therefore Section 156 (ibid) is not applicable. He submits that since a specific provision of deduction of tax on petroleum products has been provided, therefore, the general provision of section 156 of the Ordinance as well the ratio of the judgment in *Wazir Ali Industries* (supra) has no applicability on the case of Respondent.

On the other hand, department's Counsel has contended that despite repeated chances in post remand

proceedings, the taxpayer has failed to substantiate its stance with any supporting document and never filed any details as to the amount of commission offered for promotion and the tax required to be deducted. According to him this case is fully covered by the judgment passed in the case of *Wazir Ali Industries* (supra).

Heard learned Counsel for the parties and perused the record. At the very outset, we have noticed that insofar as finding of the Tribunal is concerned, despite the judgment in the case of Wazir Ali Industries (supra) being in field at the relevant, time has not dilated upon the same; nor has distinguished it. In fact, it was incumbent upon the Tribunal to examine the said judgment, as well as the question of law¹, and thereafter, decide the issue finally. Apparently, the general provision (s.156) is applicable on all sorts of prizes offered by the Companies for promotion of sales, including any free units given to the distributors for sales promotion. From perusal of the arguments raised on behalf of the Respondents before the Tribunal, it clearly reflects that according to them the amount in question though represents an incentive, being in nature of discount allowed to petrol pump operators on promotion of sales in normal course of business but is not a prize on promotion of sales. On the other hand, the case of the department is that since prize, award or reward has not been defined in the Ordinance in question; therefore, any target incentive including sales promotion falls within the ambit of Section 156 of the Ordinance. The Tribunal's order has failed to deal with this aspect of the case and so also the judgment in the case of *Wazir Ali Industries* (supra); therefore, we are left with no choice; but to set aside the order in question and remand the matter to the Tribunal for a decision afresh in

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¹ "Whether on the facts and circumstances of the case, the Appellate Tribunal was justified to hold that the prize offered by companies for promotion of sales as used in section 156 of the Income Tax Ordinance, 2001 covers the amount of free units given by the applicant company to the distributors towards sales promotion?"

accordance with law; keeping in view the judgment of this Court in the case of *Wazir Ali Industries* (supra). *Ordered accordingly*. Matter be decided by the Tribunal preferably within a period of 90 days from the date of this order.

All listed Reference Applications stand disposed of. 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 and a copy of this order may also be placed in the connected cases.

CHIEF JUSTICE

JUDGE

<u>Ayaz</u>