

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Income Tax Reference Application 69 of 2019
Income Tax Reference Applications 65, 66, 67, 68 and 70 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on office objection No.20
- 2. For orders on CMA No.188/2019
- 3. For hearing of main case

14.10.2025

Mr. Muhammad Aqeel Qureshi, advocate for the applicant

These reference applications are pending since 2019 without any progress. As being representative of the facts paragraph 5 of the impugned order is reproduced herein below :

5. We have heard arguments of both the parties, have carefully gone through impugned orders of the officers below and the relevant available record of the case.

The appellant's main contention, which forms the crux this appeal is that the ADCIR has wrongly applied the provision of clause 68(1) of the Second Schedule on the applicant and also not allowed the university receipts under Clause 92 of the 2nd Schedule to the Ordinance, 2001 and excess university receipts and computed taxable income. The facts of the case are that foundation was established to carry out charitable and welfare activities in various disciplines which included Isra University (an Autonomous University Established through an Act of Sindh Government in 1997) a recognized institution by HECP, Institute of Ophthalmology, Schools of nursing and paramedics, Quran Academy, Hospitals and other Schools and all these institutions were run on charitable basis with no motive of profit earning. Entire income which is the surplus of receipt over expenditure is earmarked for future expenditure of charitable activities and none of the profit is distributed as dividend or in any other form or set apart or expensed for the benefit of the Board of Governors and surplus is transferred to General Capital Fund Account as per Company Ordinance. Assets of the company are not utilized to provide personal benefit to any person and they have been utilized solely for the promotion of declared objectives of the foundation and are used for charitable purposes. The learned AR of the appellant has relied on the decision of Tribunal reported as 1994 PTD 1294.

We have gone through the order of tribunal relied upon by the appellant and affirm its applicability to the instant appeal. The main case before the Tribunal was that of a charitable trust running various schools which enjoyed exemption/surplus from running of schools (which is exactly the same as in the case of appellant) besides income from rent, dividend, donation and profit on Khas Deposit Certificates. The trust was enjoying exemption under clause 93 and 94 of the Second Schedule to the Income Tax Ordinance which was subsequently amended and income from house property remained under exemption whereas the rest of the income/surplus was brought into the tax net leading to assessment of rest of the income and charge of tax on the trust. The Tribunal in that case held that the intent of legislature was to tax the business income and other income besides property income was to curtail the misuse of trust for the purpose of earning income from the business. The tribunal posed a question to itself that whether it would mean that any trust earning business income can still get exemption under any other clause to frustrate amendment brought by the legislature and the tribunal held that they

cannot get exemption under clause (93) but if the business income earned by the trust is applied or finally set apart for charitable purpose then if they can claim exemption under any other clause (which in the case was clause (86) of the Second Schedule to the Repealed Ordinance) then such exemption would be available, provided the assessee can satisfy the conditions laid down in such clause [i.e. clause (86) in that case] are not met.

The facts and circumstances of this case squarely fit into the facts leading to the judgement of the Tribunal relied by the appellant, therefore we have no hesitation to hold that income of the appellant also qualifies to be exempt under clause (92) of Part-1 of the Second Schedule therefore, business income would not remain taxable in pursuance of proviso to clause 58(1) of Part 1 of the Second Schedule. In view of the fact and circumstances, we vacate the impugned orders of the officers below.

Learned counsel was asked to assist as to whether the factual discussion was exceptionable he remained unable to assist. Learned counsel was queried as to the fate of the earlier judgment of the Tribunal relied upon and once again he remained unable to assist. Learned counsel merely sought time however more than six years after filing of these reference application/s, no case could be made out. These reference applications are dismissed for non-prosecution.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001.

Office is instructed to place copy of this order in connected matters.

Judge

Judge