

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Income Tax Reference Application 156 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For orders on office objection Nos.01, 06, 25 and 29
- 2. For orders on CMA No.204/2023
- 3. For hearing of main case

16.10.2025

Mr. Kanji Mal Meghwar, advocate for the applicant

On the last date, i.e. 02.10.2025, following order was passed:-

“Per learned counsel the appeal filed before the Tribunal by the respondents was dismissed vide judgment dated 01.03.2022. Thereafter a miscellaneous application was filed for recall of the order, however, the same was dismissed as not pressed, as discerned from the order available at page 39. Learned counsel states that a subsequent miscellaneous application was filed and vide the impugned order the plea of the respondents was allowed and the entire concluded adjudication process was overturned.

Admit reference; notice; to come up on 16.10.2025. Impugned order dated 01.09.2022 in M.A. (Rect.) No.1040/KB/2022, M.A. (Rect.) No.1041/KB/2022 and M.A (Rect.) No.1042/KB/2022 is suspended.”

Bailiff report demonstrates notice has been served, hence, the same is already ‘held good’. The questions framed for determination are as follows:-

- 1. Whether the Appellate Tribunal has travelled beyond the scope of its powers and jurisdiction by recalling its earlier order under the garb of rectification, which is not permissible under the scope of section 221 of the Income Tax Ordinance, 2001?
- 2. Whether an order passed by the Appellate Tribunal consciously with application of mind after examining the facts and circumstances of the case and law applicable, can be subsequently recalled by the Tribunal under the provisions of section 221 of the Income Tax Ordinance, 2001?
- 3. Whether on the facts and circumstances of the case the Appellate Tribunal has erred in law to accept the Miscellaneous Application of the taxpayer, when the taxpayer failed to point out any mistake floating on the surface of record attracting the provisions of section 221 of the Income Tax Ordinance, 2001?

4. Whether in the facts and circumstances of the case the Learned ATIR was justified to entertain fresh Miscellaneous Applications filed by the taxpayer company whereas taxpayer's earlier Miscellaneous Applications were dismissed vide order MA (Recall) No.799/KB/2022, 800/KB/2022 & 801/KB/2022 in ITA No.1030/KB/2020, 1031/KB/2020 & 1032/KB/2020 (Tax year 2018) dated 31.03.2022?

Learned counsel refers to original judgment dated 23.02.2022 by virtue whereof the appeals were dismissed. Paragraph 5 reads as follows:-

“5. A bare reading of above findings of the learned CIR(A) we find that the learned CIR(A) has confirmed the order. We are of the considered view that it is an admitted position that the taxpayer was failed to file monthly withholding statement u/s 165 which were not filed by the appellant in the impugned period of April to June 2018. Further the learned CIR(A) has confirmed the penalty orders after detailed discussion. Before us learned A.R has not been able to rebut the findings of the learned CIR(A) which is upheld. Hence, the appeals filed by the taxpayer stand dismissed.”

Learned counsel states that subsequently a miscellaneous application for recalling of earlier order was filed however the same was dismissed as not pressed vide order dated 31.03.2022; same is reproduced herein below:-

“By this order, we intend to dispose of these titled miscellaneous applications for recalling filed by the applicant/taxpayer against the order dated 23-02-2022 passed by this Tribunal vide ITA NOS.1030, 1031 & 1032/kb/2020 on the grounds as set forth in the memo of appeal.

2. Mr. Iritiza Advocate at the outset stated that present miscellaneous applications for recalling had been filed under some misconception and at is stage it seems not pressed. He accordingly requested for permission to withdraw the miscellaneous applications.

3. On the other hand learned D.R has tendered no objection for withdrawal of instant miscellaneous applications filed by applicant. Accordingly the instant MA for recalling stand dismissed as not pressed.”

Learned counsel states that thereafter a miscellaneous application seeking the same relief albeit in the garb of rectification was filed and the same was allowed vide the impugned order. Relevant part whereof is reproduced herein below:-

“5. We have examined the case record and the contents of the instant rectification applications and are of the opinion that the learned A.R has rightly pointed out the error committed inadvertently while framing the order dated 23-02-2022 in the ITA No.1030, 1031 & 1032/KB/2020.

6. In view of the pointation by the learned counsel and above cited case laws, the pointed para-5 of the order dated 23-02-2022 is corrected and para-5 may be read as follows in future:

“DCIR has wrongly imposed maximum penalty on merely default of non-filing of Nil statements of above period. The Learned Officer picked purchase amount from sales tax filed return for the month of April, May and June at Rs.6200,018/-, Rs.1269,2672 and Rs.2062,4398/- respectively. No Show cause notice and opportunity of being heard was provided to the taxpayer by the Officer before finalization of Order u/s. 182 of the Income

Tax Ordinance, 2001 and also committed serious violation of FBR Instructions issued from time to time latest of which letter in field vide C.No.6(4)Bud/2018 dated 23rd July 2018 Para-3 of such instructions. It is also violation of reported judgments of this tribunal vide ITA No.863, 864, 865 and 866 of 2017 dated 06-03-2019. ITA No.659/KB/2014 and PTD 1579 (LHC). In view of the above facts and circumstances and cited case laws; orders of authorities below carry illegality and irregularity, hence the both orders are hereby annulled and penalty imposed by the Officer is also deleted in captioned tax periods. Resultantly, the appeals filed by the Appellant are allowed."

7. The above correction in captioned miscellaneous applications is part and parcel of the main order dated 23-02-2022 passed by this tribunal in ITA No. 1030, 1031 & 1032/KB/2020."

Learned counsel states that rectification is permissible per section 221 of the Income Tax Ordinance, 2001 to rectify any mistake apparent from the record and the same is not a substitute for a reference or an appeal. Learned counsel states that this is no case of first impression and the matter has been addressed by the Supreme Court time and again and the most recent judgment of the Supreme Court in such regard is the case of *Chaudhry Steel Furnace v. Commissioner Inland Revenue, Sialkot* reported as 2025 SCMR 1505. Learned counsel states that the issue before the Court is not just *prima facie* dissonance of the impugned judgment with settled law, but also it must be seen that such applications are being entertained by the learned Tribunal to overturn their own judgments and such practice merits attention.

In *mutatis mutandis* application of the law illumined by the Supreme Court, as mentioned *supra*, the questions are decided in favour of the department and against the respondent. The impugned order is *set aside* and the reference is allowed.

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

A copy of this order may also be sent to the Attorney General for Pakistan, Secretary Revenue and Chairman FBR at Islamabad.

Judge

Judge