

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Income Tax Reference Application 447 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection No.25
2. For orders on CMA No.511/2022
3. For hearing of main case

22.09.2025

Mr. Qaim Ali Memon, advocate for the applicant

The impugned judgment has apparently been rendered on the basis of non-compliance of statutory requirement / non-issuance of statutory notice. The operative part is reproduced herein below :

7. We observed during the hearing of the case that no reason has been given by the DR to have ignored the statutory requirements being mandatory in nature as provided u/s 177(6)&(6A) of ITO, 2001 and proceeded against the Appellant for amendment of assessment u/s 121 of ITO, 2001 based on Department's own conjectures. It is a statutory requirement of provision of Section 177 of ITO, 2001 that an audit report containing audit observations and findings on the issues raised therein to be issued and thereafter the Taxpayer is to be afforded opportunity of hearing to confront and explain the issues. It is trite law that there is no intendment about tax and that nothing may be read in or assume in respect thereof. The Honorable Supreme Court of Pakistan in its judgment Mansab Ali v/s Amir cited in PLD 1971 SC.124 has also held that "it is an elementary principle that if a mandatory condition for exercise of jurisdiction by a Court, Tribunal or Authority is not fulfilled, then the entire proceedings, which follow become illegal and suffer from want of jurisdiction". In case of the Appellant the Department not fulfilled the mandatory condition as prescribed u/s 177(6)&(6A) of ITO, 2001 which rendered all subsequent proceedings and orders to be illegal and suffer from want of jurisdiction as per dictum laid down by the Apex Courts cited Supra.

8. It is settled law that the provisions creating tax liability must be interpreted straightly in favor the Taxpayer and against the revenue Authorities; any doubt arising from the interpretation of a fiscal provision must be resolved in favor of the Taxpayer; and if two reasonable interpretations are possible, the one favoring the Taxpayer must be adopted as held by the Apex Court in its judgment reported in 2014 PTD 284. In this case amendment in assessment was made in violation of Section 177(6)&(6A) of ITO, 2001, wherein, additions were made without issuing separate statutory notice u/s 11(1)(b) of ITO, 2001 which is against the law as laid down by the Honorable High Court of Sindh, Karachi in its judgment cited in 2010 PTD 704.

9. Based on above findings and by following the dictum laid down by the Apex Courts in its judgments/orders cited Supra, we are inclined to accept the appeal of the Appellant and hold that the impugned orders passed by the forums below are illegal and not sustainable in law which are annulled.

10. The appeal filed by the taxpayer is hereby allowed.

Learned counsel was asked as to whether the observation regarding mandatory requirement was correct and he replied in the affirmative. Learned counsel was further asked as to whether the requirement had been complied for, he replied in the negative. In view hereof we are sought to assist the court as to what question of law arises to be determined by this Court. He sought further time to prepare his case. It is noted that this reference has been pending since 2022 without any progress and even on a previous date, being 20.02.2023, same counsel had sought adjournment on the same pretext. It appears that the applicant is not interested in pursuing this matter which is dismissed for non-prosecution.

Judge

Judge

Amjad