

# IN THE HIGH COURT OF SINDH AT KARACHI

ITRA No. 91 of 2014

Before : **Mr. Justice Irfan Saadat Khan**  
**Mr. Justice Fahim Ahmed Siddiqui**

Commissioner Inland Revenue,  
 Zone-II, Large Taxpayer Unit, Karachi. .... Applicant

Versus

M/s. Epla Laboratories (Pvt.) Ltd. Karachi. .... Respondents

Date of hearing  
 as well as of short order : **23.01.2020**

Date of reasons : \_\_\_\_\_

Applicant Commissioner Inland Revenue, Zone-II, Large Taxpayer Unit,  
 Karachi through Mr. Kafeel Ahmed Abbasi, advocate.

Respondent M/s. Epla Laboratories (Pvt.) Ltd. Karachi through Mr. Agha  
 Kafeel Barik, advocate.

## J U D G E M E N T

**FAHIM AHMED SIDDIQUI, J:-** In consequent to some findings by the learned Appellate Tribunal Inland Revenue (hereinafter 'AITR'), the applicant on behalf of the department has referred the following questions of law for the opinion of this Court:

- a) Whether on the facts and circumstances of the case the learned AITR was justified in holding to allow bad and doubtful debts when exhaustive efforts were not made for recovery of debts u/s 29 of the Income Tax Ordinance, 2001 (hereinafter referred to as 'the Ordinance')?

- b) Whether on the facts and circumstances of the case the learned AITR was justified in holding that existence of reasonable grounds for believing that debts were irrecoverable will only be decided by the taxpayer?

2. Brief facts of the case, as gathered from the record, are that the respondent is a private limited company and doing business of manufacturing and sale of pharmaceuticals. For the tax year 2012, its return, which was deemed to have been assessed u/s 120(1) of the Ordinance but the same was amended u/s 122(5A) of the Ordinance by the Additional Commissioner, Inland Revenue, Audit Range-B, Zone-II, LTU, Karachi and a tax demand of Rs. 10,672,755/- was made vide order dated 30-10-2013. The said order was challenged before the learned Commissioner, Inland Revenue (Appeal-I), Karachi, who allowed some relief to the respondent but confirmed assessment order on certain issues. The said order of the learned Commissioner, Inland Revenue (Appeal-I) was again challenged by the respondent before the learned AITR, where some further relief was granted to him by holding that bad or doubtful debts were irrecoverable but on the remaining grounds, the appeal was dismissed.

3. Mr. Kafeel Ahmed Abbasi, the learned counsel for the applicant/ department submits that the respondent has not made hectic efforts for the recovery of bad and doubtful debts. He submits that the respondent has not preferred to adopt the legal course for recovery of the bad debts, as such it could not be said that serious efforts were made. In response to a query from the bench, Mr. Abbasi accentuates that the questions posed in the instant Reference are questions of law. According to him, since the issue was not properly and legally addressed by the learned AITR, as such this Court can look into the legal aspect of the issue raised. He emphasizes his point of view by submitting that these questions have

already been admitted for the opinion. According to him, the findings of the learned AITR are beyond the record; as such this Court is fully empowered to probe into the issues, raised by the department. He submits that unless proper and concrete efforts were not made, the debts mentioned by the respondent could not be written off.

4. On the other hand, Mr. Barik, the learned counsel for the respondent submits that the referred questions are questions of facts; as such this court cannot dilate upon the same. He submits that on the question of facts, the learned AITR is the final authority under the law and only a question of law can be referred to this Court for pondering over and giving a finding on it.

5. We have considered the rival contentions and have gone through the available record.

6. It is settled law that the Tribunal is the last and final fora to decide the question of facts. A question pertaining to factual controversy neither can be referred to nor the same can be probed into by this Court. It is the contention of Mr. Kafeel Ahmed Abbasi that the learned AITR has overlooked the record, while reaching the conclusion regarding bad debt.

7. In the present position of affairs, it is only appropriate that we take a quick look at the relevant legal provisions and identify the legal issue in dispute. As per the provision of Section 132(10) of the Ordinance, the decision of the Appellate Tribunal is the final authority save to the provision of Section 133 of the Ordinance. As per the provision of Section 133 of the Ordinance, only the question of law can be referred to this Court for a decision on such question of law. Hence, it is an admitted position that only 'question of law' can be referred to this Court for decision and the finding of the Tribunal on the facts of the case is final. From the plain recital of the referred questions of law, it manifests that

both of the referred questions pertain to factual controversy and no legal point is raised in the said questions. The core issue raised in the questions is whether the bad debts were recoverable or not. It is evident that it is not posing a legal issue instead it intends to attack upon the mode and style of recovery of the bad debts, which relates to the fact and not to some legal proposition.

8. Nevertheless, the learned counsel for the applicant/department has emphasized that the finding of the learned AITR is beyond the record. Although, since the questions raised pertain to factual controversy but because of such emphatical assertion, we have examined the order of the learned AITR. We found that the learned AITR has considered even minute details, while passing the order. It has been recorded by the learned AITR that the conditions laid down under Section 29 of the Ordinance, were fulfilled and certified by the respondent's auditors and G.M. Finance. It has also been observed that these bad debts have an age of 5 to 10 years and after such a long time, their recovery was hardly possible. Hence, we are of the view that there is nothing beyond the record in the findings of the learned AITR.

9. In existing circumstances, the questions referred to this Court were replied by us through a short order dated 23-01-2020 in AFFIRMATIVE i.e. in favor of the respondent / taxpayer and against the applicant/department and these are the reasons for the same. Office is directed to send a copy of this order under the seal of the Court to the Registrar, learned Income Tax Appellate Tribunal (Pakistan), Karachi, as required under the law.

JUDGE

JUDGE