

# IN THE HIGH COURT OF SINDH AT KARACHI

ITRAs Nos. 280 to 282 of 2008

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

The Commissioner Income Tax,  
 Zone-D, Karachi. .... Applicant

Versus

M/s. Habib Impex, Karachi. .... Respondents

Date of hearing as well  
as short order : 13.02.2020

Date of reasons : 14.02.2020

Applicant The Commissioner Income Tax, Zone-D, Karachi through  
 Mr. Muhammad Taseer Khan, advocate.

None present for the respondent

## J U D G E M E N T

**FAHIM AHMED SIDDIQUI, J:-** In all these Income Tax

Reference Applications ('ITRAs), the department has referred the identical questions in similar background for the opinion of this Court; therefore, we are going to respond the same with this single judgment. The referred questions are given bellow:

- a) Weather in the case of every importer of goods, the advance tax is required to be collected by the Collector on the basis of the value of goods and increased by the Customs Duty and Sales Tax thereon?

- b) Whether the learned Tribunal was justified to hold that there is no room for withholding the refund during the pendency of review petition pending disposal before the Hon'ble Supreme Court on the same legal issue?
- c) Whether the interpretation of Section 50 (5) given by the Hon'ble Sindh High Court in a reported judgment i.e. 2005 PTD 1328 is a binding on authorities below, whereas judgments based on counsel having conceded will not become a precedence?

2. The backdrop of the cases is that the respondent has claimed certain refunds during different tax years on the ground that while charging income tax under Section 80-C of the Income Tax Ordinance, 1999 ('the repealed Ordinance') the amount paid as 'sales tax' could not be deemed to be the income of the taxpayer. However, the application for a refund was rejected on the basis of a clarification of CBR, but CIT(A) allowed the appeal filed by the taxpayer, which was upheld by the learned Tribunal.

3. The learned counsel for the applicant contends that during pendency of the review petition before the Hon'ble Supreme Court, the refund claim of the taxpayer could not be considered, as since the initial order was proper. He contends that unless the review petition was disposed of against the department, the tax collected could not be refunded. However, he submits that there will be no cavil that the decisions of superior Courts are binding upon all subordinate judicial and quasi-judicial bodies.

4. We have heard the arguments advanced and have gone through the available material. So far as the questions Nos. 1 & 2 are concerned, they appear to be self-contradictory, while the issue of sales tax and duty has already laid at rest in a case of this Court reported as **M/s. Madina Enterprises Limited vs Federation of Pakistan (1994 PTD 848)**. Surprisingly, the third question appears to be absurd, as the same deals

binding effect of the judgments of superior Courts. We are of the view that in the light of Articles 189 and 201 of the Constitution of the Islamic Republic of Pakistan, such question cannot be raised as, whatever the circumstances may be, the judgment of superior Courts shall remain binding on all the subordinate authorities.

5. In view of the above discussion, it will be inept to reply these questions, as the same are misconstrued and cannot be considered as the questions of law at all. Hence, for reasons to be recorded later on, all these ITRAs were dismissed through our short order dated 13-02-2020 and these are the reasons for the same.

J U D G E

J U D G E