IN THE HIGH COURT OF SINDH AT KARACHI

(Extraordinary Reference Jurisdiction)

I.T.R.A. No. 366 of 2017

Date	***Order with signature of Judge***

Present:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

Fresh Case

For hearing of Main Case.

21.01.2021:

Mr. Ameer Baksh Metlo, advocate for the applicant.

O R D E R

1. Through instant Income Tax Reference Application, the applicant has proposed following questions, which according to learned counsel for the applicant, are questions of law, arising from the impugned order dated 29.06.2017 passed by the Appellate Tribunal Inland Revenue (Pakistan) Karachi in ITA No.816/KB/ 2014 [Tax Year 2013] and require an opinion of this Court. Proposed question read as follows:-

> *"i. Whether on the facts and circumstances of the case, the learned Tribunal is justified to reject departmental appeal in respect of curtailment of finance cost due to the interest free loans which were extended to employees by the taxpayer. In the scenario, when on the other hand, the taxpayer has availed interest bearing loans and claimed interest expense thereon?*
>
> *ii. Whether the learned ATIR was justified to delete the addition on the ground that the legal section mentioned by the officer in the show cause notice is different from the legal section mentioned in the final assessment order specially when the action is justified and the legitimate Govt. Revenue is involved?"*

2. After having read out the proposed questions and the impugned order passed by the Appellate Tribunal Inland Revenue, as well as the order of the Authorities below, learned counsel for the applicant submits that the Appellate Tribunal has erred in law by dismissing the appeal of the applicant department in respect of curtailment of finance cost due to the interest free loans extended to the employees by the taxpayer. It has been prayed that impugned order may be set-aside and the questions may be answered in favour of the applicant and against the respondent.

3. We have heard the learned counsel for the applicant, perused the record and the impugned order passed by the Appellate Tribunal Inland Revenue, with his assistance and have also examined the relevant provisions of law. From perusal of the order passed by the Appellate Tribunal, it has been observed that while dismissing the appeal of the applicant department, the Appellate Tribunal has been pleased to observe that the treatment meted out to the interest free loans given by the taxpayer to his employees, was beyond the Show Cause Notice issued by the Assessing Officer to the respondent, who initially re-characterized the loans transaction under Section 108/109 of the Income Tax Ordinance, 2001, whereas, respondent was never confronted to the effect that the taxpayer's employees are close associates nor any finding to this effect has been recorded. Therefore, the provision of Section 28(1)(a) of the Income Tax Ordinance, 2001, or Section 108/109 could not be invoked under the facts and circumstances of this case. It will be advantageous to reproduce the finding of the Appellate Tribunal as contained in Para: 6 of the impugned order, which reads as follows:-

> *"6. We have considered the rival arguments advanced by the AR and DR and the impugned order has also been perused. It is apparent from the record that the contention of the Appellant/Taxpayer is correct as the show cause notice was*

issued for re-characterizing of employees loan transaction u/s 108/109 whereas addition is end-up in the impugned order u/s 28(1)(a) which was not the subject matter of the show cause notice. It is a well establish principle held by the apex courts that any action beyond the scope of show cause notice is unjustified and liable to be deleted. Besides above the officer did not unearth the relationship of "associates" between the Appellant and nits employees. The ACIR should have to prove the status of "associates" and then apply the terms of Section 108. Secondly, the ACIR did not discuss as to how section 109 was being applied when he did not establish the above relationship of tax avoidance scheme and such markup would yield in reduction or avoidance of tax. Thus, both sections could not apply simultaneously without putting any thing on record. under these circumstances the additions hereby deleted and the impugned passed by the learned CIR (A) is upheld by this Tribunal"

4. In view of hereinabove fact and circumstances of the case and the finding as recorded by the Appellate Tribunal Inland Revenue, which prima facie, does not suffer from any factual error and legal infirmity, we do not find any substance in the instant reference application, whereas, the order of the Appellate Tribunal does not require any interference by this Court under its reference jurisdiction.

5. Accordingly, instant Reference Application, is dismissed in limine. Consequently, the proposed questions are answered in "AFFIRMATIVE" against the applicant and in favour of the respondent.

JUDGE

JUDGE

A.S.