

ORDER SHEET

# HIGH COURT OF SINDH AT KARACHI

ITR No.124 of 2006

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Date Order with signature of Judge

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For hearing of case

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07.04.2022.

Mr. Kafeel Ahmed Abbasi, Advocate for the applicant.

Mr. Agha Kafeel Barik, Advocate for the respondent.

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The instant Income Tax Reference (ITR) was filed by raising the following questions of law:-

*“Whether on the facts and in the circumstances of the case, the learned ITAT was justified to hold that unabsorbed depreciation would be available for set-off against any income of the assessee other than business income in subsequent year?”*

*“Whether on the facts and in the circumstances the learned ITAT was justified to rely on the judgment reported as (1995) 71 Tax-221 (Trib) and (1964) 51 ITR 693 where the ITAT has stretched the law beyond its simple meaning; by holding that the provisions of section 38(6) of the Income Tax Ordinance, 1979 are applicable to the case of the assessee whereas the same are applicable to firms and partners and not to all assessees?”*

At the very outset, the learned counsel appearing for the applicant/department submitted that the issue involved in the instant ITR stands decided by the Hon’ble Supreme Court of Pakistan in the case of *Commissioner of Income Tax and another Vs. Balochistan Concrete and Block Works Limited and others (2017 PTD 717)* wherein it was observed by the Hon’ble Supreme Court of Pakistan that “the loss being carried forward cannot be set-off against a source other than the profits and gains of such business or profession”. Hence, according to the learned counsel, the questions raised in the instant ITR may be decided in favour of the department and against the applicant/assessee by answering the said questions in negative.

Mr. Agha Kafeel Barik, Advocate has appeared on behalf of the respondent and he could not controvert this fact. We, therefore, after hearing both the learned counsel dispose of this ITR by answering the questions in negative i.e. in favour of the department and against the applicant/assessee.

Let a copy of this order be sent to the Registrar, Income Tax Tribunal for doing the needful.

JUDGE

JUDGE