

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Agha Faisal

Income Tax Reference Application Nos. 973 to 977 of 2008

Commission (Legal Division)

Versus

State Life Insurance Corporation of Pakistan

Date of Hearing: 28.03.2023

Applicants: Through Mr. Muhammad Aqeel Qureshi  
Advocate.

Respondent: Through Mr. Khalid Mehmood Siddiqui  
Advocate.

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- These Income Tax Reference Applications impugn a common order of Income Tax Appellate Tribunal (ITAT) dated 28.04.2008 passed in ITA No.545/KB of 2003, which gave rise to two questions as under:-

- A) Whether on the facts and circumstances of the case learned ITAT was justified in directing not to charge tax on dividend over and above minimum tax at 0.5% on balance turnover of the assessee?*
- B) Whether on the facts and circumstances of the case the learned ITAT was justified in holding that it was a legal requirement to issue a notice under section 65 in the case?*

2. The assessment of the government owned corporation established under Life Insurance Nationalization Order 1972 was amended/finalized under section 62 of Income Tax Ordinance, 1979 (1979 Ordinance) by a taxation officer as against declared income, from gross premium including first year premium, single premium, group premium, consideration for ordinary annuities granted (less re-insurance), profit on sale of investment, profit on disposal of fixed assets, miscellaneous income, prior years adjustment, gross rent, gross interest and dividend.

Since tax on assessed income was less than 0.5% of the declared turnover, therefore, maximum tax under section 80(d) of 1979 Ordinance was charged vide order under section 156 of the ibid Ordinance which was upheld by ITAT. While giving appeal effect to ITAT's order, assessment was reframed under section 62/135 by charging minimum tax at 0.5% on turnover and the dividend was taxed separately at 5%.

3. Precise facts are that the assessee being aggrieved of the order of the taxation officer on such exclusion of dividend, to be dealt with separately, filed appeal before the Commissioner Income Tax (Appeals) Karachi. Since the assessment orders were in respect of different tax years all the appeals were heard and a consolidated order was passed on 21.01.2003 whereby tax charged on dividend separately was deleted. Being dissatisfied with the order of Commissioner Income Tax (Appeals), the department filed Second Appeal before ITAT, which again cumulatively decided the appeals on 28.04.2008, impugned in these references, confirming the order of the CIT (Appeals), with the reiteration that it was a lawful order and before such amendment, it required notice under section 65 to be served where such amendment is sought, as in the instance cases where dividend was being treated separately for tax purposes.

4. The assessment order, insofar as it relates to dividend is concerned, is highlighted in typed page 4 of the assessment order passed by the taxation officer, which is as under:-

*“Assessee has declared gross dividend income of Rs.102.135 (M) which is includable as business income in the light of the afore-stated judgment of the Supreme Court but as the learned honourable High Court of Sindh and later on ITAT (in case of M/s Pakistan Refinery Limited) has held that dividend is to be excluded from business turnover therefore, dividend is being separately taxed as per rate applicable as provided in the Ist Schedule to the Income Tax Ord. 1979.”*

5. The observation of taxation officer is apparently contemptuous in the sense that although it is stated to be “includable” in the business income in the light of judgment of Hon’ble Supreme Court, but taxation officer has relied upon some judgments of High Court and ITAT. This part of the order was then taken into consideration by the Commissioner of Income Tax (Appeals) as under:-

*“But the learned Taxation Officer-II, Audit Division, Large Taxpayers Unit, Karachi, has taxed some income including dividend income, which was not taxed in the original assessment and has increased income from some of the sources as explained by the assessee in his written arguments above. The learned Taxation Officer-II could not do but without first issuing notice under section 65 of the Income Tax Ordinance, 1979, if he felt that some of the source of income or quantum of income from some of the sources were missing, which require the reopening of the assessment u/s 65 of the Income Tax Ordinance, 1979, for which he was legally authorized/empowered as stated by the Hon’ble High Court in their judgment cited above. Since, the learned Taxation Officer-II, Audit Division, Large Taxpayers Unit, Karachi does not find any point for allowing relief to the assessee as directed by the learned Commissioner of Income Tax (Appeals) and the learned Income Tax Appellate Tribunal, because the assessment is in accordance with the decisions of the learned Income Tax Appellate Tribunal, he is directed to repeat the same figure as is given in the original assessment order. The increase in various figures as compared to the original assessment and taxation of new item, which were not taxed in the original assessment for example dividend income, are therefore deleted and all the original assessment orders for all the five years after giving appeal effect are restored.”*

6. This question was lastly dealt with by Income Tax Appellate Tribunal (ITAT) when a consolidated order in all the appeals preferred by the department was passed. The Appellate Tribunal observed as under:-

*“We have examined the case and consulted the 4<sup>th</sup> Schedule of Income Tax Ordinance, 1979, which lays the prescribed rules for computation of profit and gains of Insurance Business in Pakistan. Perusal of the judgment quoted by the learned D.R and A.R specially the judgment 1997 PTD 1693 makes its abundantly clear that in the case of Life Insurance the income of the Life Insurance Company is to be taken as one unit income or as single basket income. This is further given strength by the decision of the Supreme Court reported as 1997 PTD 1693 (S.C.Pak) which*

*apart from many other issues discussed and decided considers income of the life insurance business as a single basket income. Furthermore, as rightly decided learned CIT (A) no notice U/s 65 was issued in the case which was a legal requirement. We find no fault with the order of the learned CIT (A) which is confirmed.”*

7. The proposed questions could not have been framed and these references could not have been filed unless the case of E.F.U. General Insurance Co. Limited<sup>1</sup> could be distinguished in terms of circumstances of the case, in which attempt, applicants failed. Since the questions are covered by the said judgment of the Hon’ble Supreme Court, which has not been distinguished by the learned counsel appearing for applicant, there cannot be a second opinion for the proposed questions in this regard. Paragraph 20 of the above referred judgment is as under:-

*“20. In the circumstances, we are of the view that assessments of the appellants which had already been made inter alia extending benefit of lower tax on dividends on the basis of the rule laid down in the American Life Insurance Company case could not be reopened under section 65(1) of the Income Tax Ordinance, 1979, and, though a binding judgment of a superior Court of the country is “definite information” in terms of subsection (2) of section 65, neither the judgment in the case of Adamjee Insurance Company nor by this Court in the case of Central Insurance Company overruled or upset the judgment in American Life Insurance Company case. We are also of the opinion that the view taken in the case of American Life Insurance Company is correct and it equally applied to income from general insurance business and, as such, case of the appellants reopened under section 66-A and even fresh assessments made by the Income Tax Officers or by appellate authorities depriving the appellants of the benefit in tax under the First Schedule to the Ordinance in respect of the dividend income are also liable to be set aside. We also find that the High Court erred in treating the case of the appellants as cases for exemption from tax whereas these cases related to the benefit of lower rate of tax available to the assesses in relation to dividend income under the First Schedule to the Income Tax Ordinance. The High Court further erred in relying on the observations made by the earlier judgment of the High Court in the case of Adamjee Insurance Company which, as observed earlier, related to different provisions. It may be observed here that no judgment has been referred which takes a different view that has been taken by the High Court in the case of American Life Insurance Company.”*

---

<sup>1</sup> 1997 PTD 1693 (E.F.U. General Insurance Co. Limited v. The ITO, Circle A-1)

8. Section 65 of 1979 Ordinance, which is in relation to additional assessment, provides that no proceedings thereunder i.e. subsection (1) of Section 65 shall be initiated unless definite information has come into the possession of (Deputy Commissioner) and he has obtained a previous approval of the Inspecting (Additional Commissioner) of the Income Tax in writing to do so. Subsection (3) of Section 65 further reiterated that notice under subsection (1) in respect of any income year may be issued within ten years of assessment year in which total income of the said year was first assessable. The proviso however clarified that where the said notice is issued on or after 01.07.1987 this subsection shall have effect as if for the words “ten years” the word “five years” were substituted.

9. Since the applicant is unable to distinguish the *ibid* judgment of Hon’ble Supreme Court on the identical point and question of law, no two opinions or view could be formed. The questions proposed and framed are thus answered in affirmative i.e. against the applicant and in favour of respondents. The Reference Applications as such stand disposed of.

10. A copy of the order be sent under the seal of the Court and the signature of the Registrar to the Income Tax Appellate Tribunal (Pakistan) Karachi in terms of Section 133(5) of Income Tax Ordinance, 2001.

11. Above are reasons of our short order dated 28.03.2023.

Dated:

**J U D G E**

**J U D G E**