

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Income Tax Appeal No. 858 of 2000 &
Income Tax Appeal No. 71 of 2000

Date Order with signature of Judge

For hearing of Case.

09.02.2023.

**M/s. Ammar Athar Saeed and Muhammad Usman Alam, Advocates For Appellants
Mr. Muhammad Aqeel Qureshi, Advocate for Respondents.**

Through Income Tax Appeal No.858 of 2000 filed under Section 136 of the Income Tax Ordinance, 1979, (since repealed) the Appellant has impugned Order dated 20.05.2000, passed by the then Income Tax Appellate Tribunal of (Pakistan) Karachi in ITA No. 977/KB of 1999-2000 (Assessment year 1998-1999), whereas, in Income Tax Appeal No.71 of 2000 order dated 25.09.1999 passed by the Tribunal in ITA No.2080/KB of 1998-99 (Assessment year 1997-1998) has been assailed. Though the impugned orders are separate; however, in both cases following identical questions of law have been proposed: -

- (i) Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal was justified in holding that the appellant's business was not a composite business and bifurcating the expenses between the leasing receipts and the non-leasing businesses receipts of your appellant and thus enhancing the non-leasing business income of the appellant?
- (ii) Whether the Hon'ble Income Tax Appellate Tribunal's decision to bifurcate the expenses between the leasing business receipts and the non-leasing businesses receipts is based and substantiated by any provision of the Income Tax ordinance, 1979?
- (iii) Whether under the facts and circumstances of the case, the Honourable Income Tax Appellate Tribunal was justified in holding that interest income earned by the appellant was income from other sources assessable under section 30 of the Income Tax Ordinance, 1979?

It appears that these Appeal No.858 of 2000 was admitted on 06.08.2002 precisely on the ground that the controversy, as raised in these

Appeals stands decided by this Court in the case reported as **Commissioner of Income-Tax Vs. Messrs Faysal Islamic Bank of Bahrain, Karachi (2001 PTD 682)**. Insofar as the connected Appeal No.71 of 2000 is concerned the same was admitted on 17.5.2000 to consider that whether the Tribunal was justified in holding that interest income earned by the Appellant was income from other sources assessable under Section 30 of the Income Tax Ordinance, 1979.

Learned Counsel for the Appellant has taken us to the Order of the Tribunal in Appeal No.58 of 2000 and the issues raised by the Respondent department before the Tribunal. From perusal of the same, it appears that there were in all six (6) objections raised by the Respondent before the Tribunal against the order of Commissioner Appeals, whereas, out of this, Issue No.1 and 2 to 5 were decided against the Respondent department against which no further Appeal has been filed by them. Insofar as issue No.6¹ (which is the matter in dispute before us) is concerned, Para-3 thereof, reflects that the matter was decided by the Tribunal by following an earlier judgment of a larger bench of the said Tribunal in ITA No. 2070/KB of 1998-99 dated 20.09.1999, which is also reported as **2000 PTD (Tribunal) 474**. Similarly, in Appeal No.71 of 2000 (though differently worded) the issue was more or less identical and was decided in the same manner by following the same judgment of the larger bench of the Tribunal. However, it appears that the judgment of the Larger Bench of the Tribunal, on the basis of which the impugned Orders have been passed by the Tribunal has been subsequently disapproved by a learned Division Bench of this Court in the above case of **Commissioner Income Tax** (supra), whereby, it was held that the Appellate Tribunal, while dealing with the case of a tax-payer dealing in leasing business, has not made a proper and correct appreciation of Sections 23, 34, 35 & 38 of the Income Tax Ordinance, 1979. While confronted Respondent's

¹ Whether the learned CIT(A) erred in directing that there is no provision regarding allocation of admissible expenses on proportionate bases and all other administrative and operating expenses are to be allowed in accordance with the provision of section 23 of the Ordinance, 1979.

Counsel has not been able to controvert such factual position; nor we have been informed that whether the judgment of this Court as above was assailed before the Apex Court. We may also mention the fact that insofar as the orders of Commissioner Appeals in both cases are concerned, the Applicant was satisfied and it is only the Respondent department who had assailed the said orders before the Tribunal.

In view of the above and notwithstanding the fact that somewhat different facts are involved and so also the proposed questions are somewhat differently worded; however, the crux of the matter being identical as to following an earlier judgment of a larger bench of the Tribunal while passing of the impugned orders, which subsequently stands disapproved; by a learned Division Bench of this Court in the above case in favour of the Assessee and against the Department; these Appeals are allowed by answering the questions in favour of the Appellant and against the Respondent. The impugned judgments of the Tribunal in both the Appeals stands set-aside / modified accordingly.

Let a copy of this order be sent to the Income Tax Tribunal (now Inland Revenue Tribunal) in terms of Section 136 of the Income Tax ordinance, 1979 (since repealed).

J U D G E

J U D G E

Ayaz