

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
ITC No. 58 of 1998.

Date

Order with signature of Judge

For hearing of Case.

09.10.2024.

Mr. Asim Mansoor Khan, Advocate for Applicant.

Mr. Imtiaz Ali Solangi, Advocate for Respondent.

Muhammad Junaid Ghaffar J.- Through this Income Tax Case, the Applicant has impugned Order dated 20.06.1990 passed in ITA No. 1605/KB of 1985-86 by the Income Tax Appellate Tribunal (Pakistan) Karachi, and order dated 18.02.1992 passed in R.A No. 138/HQ of 1990-91 by the Income Tax Appellate Tribunal (Pakistan) Karachi; whereby Applicants' request for referral of proposed questions of law to this Court was refused. The questions raised are as under:-

- a. Whether on the facts and circumstances of the case, the Hon'ble Tribunal was justified in holding that the claim for Head Office Expenses should be restricted under the provisions of Rule 20 of the Income Tax Rules, 1982?
- b. Whether on the facts and circumstances of the case, the Hon'ble Tribunal was justified, in holding that tax allowability at Head Office Expenses, Article III(3) at the Convention between Pakistan and the USA for the avoidance of double taxation thereafter referred to as the ('Tax Treaty') was irrelevant and not related to the issue?
- c. Whether on the facts and circumstances of the case, the Hon'ble Tribunal was justified, in holding that the claim for Head Office Expenses should be restricted under Rule 20, and in ignoring the accepted principles of law that in case of contradiction between the provisions of local legislation and a tax treaty, the provisions at the treaty would override the former?

At the very outset, learned Counsel for the Applicant submits that the proposed questions including Question No. 1 have already been answered in favour of the taxpayers and against the department in a number of cases and he has relied upon the cases reported as ***Messrs***

American Express Bank Limited, Karachi v. Commissioner of Income Tax, Companies-I, Karachi (2009 PTD 1791) and unreported judgments / orders of this Court dated 24.02.1999 passed in ITA No. 191/1997, Order dated 17.09.2022 passed in ITR No. 220/1991 and Order dated 06.03.2008 passed in ITR No. 108 of 1993.

When confronted Respondent's Counsel concedes; therefore, the proposed questions are answered in favour of the Applicant and against the Department for the reasons so assigned in the aforesaid orders / judgments of this Court.

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