

IN THE HIGH COURT OF SINDH AT KARACHI

Income Tax Reference Application (“ITRA”) No.220 of 2016

Date	Order with signature of Judge
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HEARING OF CASE:

- 1. For order on office objections No.10 & 19.
- 2. For hearing of CMA No.284/2018.
- 3. For hearing of main case.

Dated: 8th April 2025

Mr. Anwar Kashif Mumtaz, Advocate for Applicant.

Mr. Ameer Nausherwan Adil, Advocate has filed vakalatnama on behalf of Respondent.

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Today, at the very outset, Applicant’s Counsel has placed on record copy of Order dated 22.09.2022 passed by the Hon’ble Supreme Court of Pakistan in Civil Petition No.1810-L of 2022 (Pak Panther Spinning Mills Ltd v Commissioner Inland Revenue, Lahore) and submits that identical facts are involved, therefore, following the observations of the Hon’ble Supreme Court matter may be remanded to the Tribunal. The said observations of the Hon’ble Supreme Court of Pakistan reads as follows: -

- 1. *Learned counsel for the petitioner states that the petitioner had suffered gross loss, therefore, was not liable to the minimum tax regime under section 113 of the Income Tax Ordinance, 2001 (the Ordinance). The petitioner admits having made a mistake in mentioning depreciation and other inadmissible expenses in the return but it is submitted that if the same were removed then too the petitioner would not come within the minimum tax regime because it still made a gross loss. He states that the Appellate Tribunal Inland Revenue (Tribunal) has adopted two different approaches with regard to the said section. The Tribunal penalized the petitioner but did not do so the Bank of Punjab (in ITA 1486/LB/2013, order dated 18 May 2021) in whose case the Tribunal subtracted the depreciation and other inadmissible expenses and then considered whether there was a gross loss and as there was, did not apply section 113 of the Ordinance.*
- 2. *The learned counsel for the Commissioner Inland Revenue [respondent herein] was not able to successfully controvert the aforesaid contention.'*

“3. It would be appropriate if the Tribunal applies the same yardstick to the petitioner as it did with the Bank of Punjab and subtract depreciation and other inadmissible expenses and then ascertain if the petitioner had suffered gross loss. And, only if the petitioner did not suffer gross loss to apply the minimum tax regime contemplated by section 113 of the Ordinance.

4. Therefore, the judgments of the Tribunal and the High Court are set aside, and consequently the appeal preferred by the petitioner before the Tribunal, that is, ITA No. 759/LB/2013, will be deemed pending which shall be decided as stated above preferably within a period of three months from the receipt of this order. This petition is converted into appeal and allowed in the aforesaid terms.”

When confronted, Respondent's Counsel concedes to this position. Accordingly, the impugned order of the Tribunal stands set aside and the matter shall be deemed to be pending before the Tribunal, which shall be decided in the light of the observations of the Hon'ble Supreme Court of Pakistan, as reproduced hereinabove. Reference Application stands allowed / disposed of in these terms. Let copy of this order be sent to the Appellate Tribunal Inland Revenue, Karachi in terms of Subsection (5) of Section 133 of the Income Tax Ordinance, 2001.

ACTING CHIEF JUSTICE

JUDGE

Farhan/PS
