

IN THE HIGH COURT OF SINDH AT KARACHI

Income Tax Reference Application ("ITRA") No. 44 of 2018

Date	Order with signature of Judge
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PRESENT:  
**Mr. Justice Muhammad Junaid Ghaffar, ACJ**  
**Mr. Justice Mohammad Abdur Rahman, J**

- HEARING OF CASE:
- 1. For order on office objection No.10.
  - 2. For hearing of CMA No.259/2018.
  - 3. For hearing of Main Case.
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**Dated: 13<sup>th</sup> May 2025**

Mr. Yousuf Ali, Advocate for Applicant.  
Mr. Ameer Baksh Metlo, Advocate for Respondent.

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**ORDER**

**Muhammad Junaid Ghaffar, ACJ:** - Through this Reference Application the Applicant has impugned Order dated 26.10.2017 passed by the Appellate Tribunal, Inland Revenue of Pakistan, Karachi in MA (Recall) No.923/KB/2017 [in ITA No.169/KB of 2016] whereby rectification Application filed by the Commissioner Inland Revenue, Karachi against Tribunal's order dated 18.04.2017 has been allowed.

2. Heard learned counsel for the parties and perused the record.
3. It appears that earlier the Applicant's appeal was decided by the Tribunal vide order dated 18.04.2017, whereby, in respect of various issues, the matter was remanded to the Respondent after setting aside the order to that extent. The operative part of the said order reads as follows: -

*"6. On the other hand. Mr. Naseebullah Umrani. DR representing the Respondent Department vehemently opposed the contention made by the learned AR. He argued that the order passed by the learned CIR (A) is well within the framework of law and there is no illegality, irregularity and infirmity in the same The learned DR further explained that in LTU, reception staff always remains present till close of office hour to receive mail. However, he agreed with the AR that when mail contains voluminous details and box files these are firstly received by the concerned officer who then initials the letter which is then acknowledged by reception staff. The learned DR, however, was*

unable to give reasons for difference in tax deductible and tax recoverable. We have noted that there is a factual dispute regarding deduction of tax on payments to local vendors and the AR claims that full tax was deducted wherever applicable. He has so produced before us copies of CPRs and reconciliations. There is some force in the arguments of AR that ease was finally fixed for compliance on 23-06-2015 which was the last working day before Eid ul Azha holidays and staff was not available to receive the box files of details. It is also evidenced from the fact that the order is passed on 02-10-2015. Needless to say that it is a normal culture of government office that officers leave the office on last working day before close of office hours. The learned DR could not controvert the pointation expressly. Apart from this the order contains other errors as on page No 7 of the order tax deductible under the heads vehicle running cost, rent, rates and taxes and other expenses is different from tax recoverable which could not be explained by the learned DR. In order to meet the ends of Justice, the issues of non withholding of tax under the heads of Legal & Professional Charges, Repair & Maintenance. Vehicle Running Cost, Rent rate & taxes, other expenses, sales promotion, fixed capital expenditure are set aside with the direction to provide another opportunity of being heard and to pass fresh order in accordance with law.

7. For the foregoing reasons, the appeal filed by the taxpayer/appellant stands disposed off as indicated above."

4. The Respondent department was aggrieved in respect of the finding regarding non-deduction of taxes for payment to the foreign vendors, as to that extent it was not remanded by and, therefore, filed a Rectification Application, which has now been allowed by the Tribunal vide order dated 26.10.2017 in the following terms: -

"9. From the above portion of order it has come on record that **"Multinet Dubi Operation"** has not been mentioned therein. The breakup sheet shows that in the status column words **"Foreign Party"** are not mentioned might be due to this reasons Multinet Dubi Operation was not shown in the order for the tax year 2013. It can be said technical error or otherwise hence, the arguments advance by the learned DR for the department carries weight in the eyes of law. The position is found clouded regarding payments made, through Multinet Dubai operations in such circumstances it would be better to remand back the case to the assessing officer for the tax year 2014 with directions to cheque the entire record and then gave the same treatment as it was given in the tax year 2013.

10. For the foregoing reasons and in order to meet both ends of justice the case is remanded to the Taxation Officer with the directions to initiate above proceedings and finalize the case after providing taxpayer proper opportunity of being heard. The taxpayer is also directed to extend cooperation with the Department for disposal of this case."

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5. From perusal of the original order as well as order of rectification, it appears that no justifiable ground has been made out on behalf of the Applicant to agitate the order of the rectification as at best the matter stands remanded to the department. At the same time, the Applicant cannot take advantage of a remand order in respect of certain issues, as directed by the Tribunal in its original order, and agitate the same treatment in respect of another issue, which has been corrected through the impugned rectification order. The rectification order is not causing any prejudice to the Applicant, whereas the matter already stands remanded in respect of various other issues originating from the same proceedings. It is also important to note that the issues which were decided in favor of the Applicant through the original order was because despite best efforts on the part of the Applicant, the record so produced was not properly perused by the department and a fair chance was not given. In that case, the same reasoning will also apply to the issue in hand as the proceedings are the same. Therefore, the Tribunal was fully justified in passing the order of rectification and no case for interference is made out,

6. In view of hereinabove facts and circumstances of the case, no case for indulgence is made out, nor any question of law is arising out of the impugned order, therefore, this Reference Application, being misconceived, is hereby ***dismissed***. Let copy of this order be sent to the Appellate Tribunal Inland Revenue of Pakistan, Karachi, in terms of Subsection (5) of Section 133 of the Income Tax Ordinance, 2001.

**ACTING CHIEF JUSTICE**

**JUDGE**