

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Income Tax Reference Application No. 431 of 2024

Date

Order with signature of Judge

HEARING OF CASE / PRIORITY.

- 1) For orders on office objection No. 27.
- 2) For hearing of CMA No 3472/24 (stay)
- 3) For hearing of main case.

16.05.2025.

M/s. Umair Usman and Shaheer Memon, Advocate for Applicant
Ms. Dil Khurram Shaheen, Advocate for Respondent.

MUHAMMAD JUNAID GHAFFAR A.C.J.- Through this Reference Application, the Applicant has impugned Order dated 30.08.2024 passed under Section 129(1) of the Income Tax Ordinance, 2001 by the Commissioner (Appeals-VI), Inland Revenue, RTO-I, Karachi for tax year 2017, proposing various questions of law; however, perusal of the aforesaid order of the Commissioner, it appears that the Commissioner has not dilated upon the facts nor on law and has passed the order in a slipshod and perfunctory manner by confirming the order of Assistant / Deputy Commissioner in the following manner:-

“The appeal is decided on merits considering the facts available on record. It is a well-known fact that the appellate process of the forum of Commissioner appears is digitalized for quite some time and the learned authorized representatives / tax consultants / advocates are well familiarized and aware of the online filing of appeal, hearing notices, adjournments and stay processes. The appellant did not enter appearance despite the fact he himself filed appeal electronically. Perpetual non-compliance, as mentioned-above, indicates that the appellant does not wish to pursue the appeal and does not have corroborative evidences to support his contention. Under these circumstances, I have no alternative than to confirm the impugned order upon which this appeal was instituted.”

On perusal of the above finding, it reflects that the Commissioner (Appeals) has stated that the matter has been decided on merits notwithstanding that no one has turned up to assist him; however, he has merely affirmed the order without deciding it on merits. This issue of such orders of the Tribunals

have been dealt with and set aside by us in **ITRA Nos. 384 & 385 of 2023 (Cyan Limited v. Assistant / Deputy Commissioner and another)** in the following terms:-

“Through these Reference Applications, the Applicant has impugned Order dated 20.11.2023 passed in ITA No. 1402/KB/2017 (Tax Year 2014) and ITA No. 1347/KB/2021 (Tax Year 2014) by Appellate Tribunal Inland Revenue at Karachi, proposing various questions of law; however, at the very outset, we have perused the findings of the Tribunal which reads as under:-

“4. We have heard the learned representatives of both the parties and have perused the relevant record of the case which confirms that both appeals have been filed on frivolous and baseless grounds as the points raised in the appeals have been eloquently addressed in the impugned orders at length. The learned CIR(A) in his order dated 29.9.2017 on pages 7-12 held a detailed discussion on all the grounds raised in instant appeal. Similarly, In respect of order u/s. 221, the learned CIR(A) in her order dated 23.9.2021 rejected application for rectification on the basis of the fact that contention of learned AR regarding non-confrontation of the issue of disregarding loss of Rs.192,484,168/- by learned officer as well as non-adjudication of ground No. 6 were false and frivolous. She reproduced the relevant portions of the impugned orders (on page 3/4) to prove the fact that objections raised had no legs to stand. Since the learned AR could not raise any objection on the treatment of learned CIR (A) on appellant's objections, warranting adjudication from this Forum, it will be sheer wastage of time to either reproduce the detailed observations of the learned CIR (A) recorded in the impugned orders or explain the relevant provisions of law to rebut objections of the learned AR of the appellant, which again will be a repetition as the same has been done by the learned CIR(A). Findings of learned CIR(A) in both the orders were found well in accordance with law requiring no interference by us, as the learned AR could not point out any such infirmity in terms of facts or law warranting our interference. With respect, these appeals appear to have been filed just for the sake of filing appeals having no substance in objections raised and such tendency needs to be discouraged resulting in wastage of time and resources of this forum the appellant and the revenue.”

From perusal of the aforesaid order of the Tribunal, it appears that the Tribunal has not dilated upon the facts nor on law and has passed the order in a slipshod and perfunctory manner by affirming the observations of the Commissioner (Appeals). Such an approach is not only incorrect and not appreciable; but is at the same time, a burden on this Court. Time and again such matters are to be remanded due to such approach of the Tribunal, which amounts to sheer wastage of this Courts time and also burdens the department as well as Taxpayers with additional costs for no fault of theirs. Moreover, per settled law, the highest authority for factual determination in tax matters is the Tribunal¹; therefore, the Tribunal is required in law to determine the facts finally so that none of the parties are prejudiced in further proceedings including Reference Applications before this Court which are to be decided only on questions of law arising out of the order of the Tribunal. Such an exercise of final determination of facts can only be done by the Tribunal when the matter is decided by way of a reasoned order and not by merely affirming the observations of the lower forum(s). In the instant matter, Tribunal's observation do not fulfil the

¹ Commissioner Inland Revenue v RYK Mills Lahore; (SC citation- 2023 SCP 226); Also see Commissioner Inland Revenue v. Sargodha Spinning Mills, (2022 SCMR 1082); Commissioner Inland Revenue v. MCB Bank Limited, (2021 PTD 1367); Wateen Telecom Limited v Commissioner Inland Revenue (2015 PTD 936)

minimum requirements of passing of orders in accordance with law. Time and again we have come across orders passed by the Appellate Tribunal Inland Revenue, whereby, instead of recording its independent findings and or reasoning, the observations of the lower forums including the Commissioner (Appeals) are being affirmed on the ground that they are correct and in accordance with law and does not require any interference. The Tribunal is not supposed to decide the Appeals in such manner; but instead, must do it on its own and not in a stereo type of manner as has been done in this case. The Tribunal shall remain careful in future as otherwise we may be compelled to direct the Ministry of Law and Justice to initiate appropriate proceedings against such Members of the Tribunal who are repeatedly passing such orders.

In view of the above, we are left with no choice but to set-aside the impugned order and remand the matter to the Tribunal to decide the same afresh and pass a reasoned order after affording opportunity of being heard to the parties. Ordered accordingly. Let copy of this order be sent to Appellate Tribunal Inland Revenue (Pakistan) at Karachi, in terms of sub-section (5) of Section 133 of Income Tax Ordinance, 2001, and the Tribunal's office shall place the same before all Members of the Tribunal. Office to place copy of this order in connected ITRA.

A copy of this order shall also be issued to Ministry of Law and Justice for information and necessary action, if any."

Accordingly, in view of the above observations in **ITRA Nos. 384 & 385 of 2023 (Cyan Limited v. Assistant / Deputy Commissioner and another)**, the impugned order of the Commissioner (Appeals) cannot be sustained and is liable to be set-aside and matter stands remanded to the Commissioner (Appeals) to decide the same afresh strictly on merits and pass a reasoned order after affording opportunity of being heard to the parties. Ordered accordingly. Let copy of this order be sent to the Commissioner (Appeals) in terms of section 133(5) of the Income Tax Ordinance, 2001.

ACTING CHIEF JUSTICE

J U D G E

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