ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Income Tax Reference Application No. 92 of 2018
Along with
I. T. R. A. No. 91, 93, 94 of 2018
I. T. R. A. No. 7, 8 & 9 of 2021

Date	Order with signature of Judge

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rehman

HEARING OF CASE.

1) For hearing of CMA No. 116/2018.
2) For hearing of main case.

09.05.2025.

M/s. Shaheer Ali Memon & Sami-ur-Rehman Khan, Advocates for Applicants.
Mr. Munawar Ali Memon, Advocate for Respondent.

_____

Muhammad Junaid Ghaffar, J: Through these Reference Applications, the Applicant has impugned order dated 21.12.2017 passed in ITA No. 1117/KB/2017 (Tax Year 2012) along with various other orders of the said Tribunal on the same issue; wherein a common Question of law which is involved and on which notice has been ordered by this Court. The said Question reads as under:-

> (a) Whether the learned ATIR erred in falling to recognize that the final tax regime in respect of Section 148(7) of the Ordinance is only applicable in cases where income is arising from the imports themselves?"

Heard learned Counsel for the parties and perused the record. Learned Counsel appearing on behalf of the Applicant submits that this question has already been dealt with and decided by the learned Islamabad High Court vide order dated 13.10.2022 passed in ITR No. 63 of 2015 *(M/s Telenor Pakistan (Pvt.) Ltd. Vs. Appellate Tribunal Inland Revenue and 3 others)* whereby, Section 148(1) and (7) of the Income Tax

Ordinance, 2001 has been interpreted in favour of the taxpayer, whereas, for a final determination of facts, the matter has been remanded to the Appellate Tribunal. He further submits that this Judgment of the learned Islamabad High Court was impugned by Commissioner Inland Revenue before Hon'ble Supreme Court through Civil Petition No. 4651 of 2022 *(Commissioner Inland Revenue (Appeals) Islamabad Vs. M/s Telenor Pakistan (Pvt) Ltd. and others)* and other connected matters which has been dismissed by the Hon'ble Supreme Court vide order dated 30.07.2024 and therefore, according to him, the legal interpretation of Section 148(1) and (7) is now a binding precedent insofar as the Inland Revenue Department is concerned. It would be advantageous to refer to the said findings of the learned Islamabad High Court which reads as under:-

> "7. Let us start with plain language of section 148(7). While section 148(1) provides for collection of advance tax from every importer of goods on the value of the goods at the rate as specified in Part II of the First Schedule to the Ordinance, Section 148(7) declares that the tax collected under section 148 shall be final tax. Such declaration is, however, followed by two carve-outs or qualifications to the declaration of finality of the advance tax collected pursuant to section 148(1).
>
> 8. Section 148(7) states that the advance tax collected shall be a final tax *"on the income of the importer arising from the imports"*. The legislature has not said that the tax collected under section 148(1) shall be a final tax on the income of the importer. It has explicitly provided that it is the final tax on the income of the importer "arising from the imports" against the value of which advance tax is calculated and collected. In the event that the legislature meant for the advance tax collected to be a final tax in relation to the income of the importer for the taxpayer, there was no reason to further qualify that the income in question is that "arising from the imports".
>
> 9. The Commissioner in the Order-in-Original has declared that under section 148(7) any advance tax collected is final tax. Such interpretation of section 148(7) does not take into account the principle of interpretation that no redundancy on surplusage can be attributed to the legislature while interpreting a fiscal statute. If the said interpretation is upheld, the words "arising from the imports" mentioned in section 148(7), which qualify the income against which the advance tax collected is to be treated as final tax, would be surplusage. As each and every word used by the legislature in a fiscal statute is to be given meaning, the plain reading of section 148(7) suggests that the first exception to the declaration of finality of the advance tax collected from an importer is that it will be deemed to be final tax against an importer deriving income from the imports against the value of which advance tax has been collected under section 148(1) of the Ordinance.

10. The second carve-out is then provided under clauses (a) to (e) of subsection (7) of section 148. Here again it is provided that even if an importer is deriving income from imports against which advance tax has been collected, it shall not be deemed to be final tax in case the imports fall within clauses (a) to (e) of section 148(7).

11. Such reading of section 148(7) is in consonance with the definition of the income under section 2(29) which defines income to include *"any amount subject to collection or deduction of tax under section 148."* The definition of income itself does not state that the tax to be collected under section 148 is final tax. Likewise, collected from an importer does not state that tax collected is a final tax.

12. Section 4 is a charging section of the Ordinance. Section 4(4)(b) provides that *"certain classes of income may be subject to ... collection of tax under Division II of Part V of Chapter X ...".* Section 148 falls within Division II of Part V of Chapter X to the Ordinance and the income against which final tax is contemplated under section 148(7) is a class of income of the importer i.e. income of the importer arising from the import of goods against which advance tax is collected.

13. Also of relevance is section 168(2) of the Ordinance. Section 168 falls within Part V of Chapter X to the Ordinance and subsection (2) of section 168 provides that, "*wherein an amount of tax has been collected from a person under Division II of this part... the person shall be allowed a tax credit for that tax in computing the tax due by the person on the taxable income of the person for the tax year in which the tax was collected or deducted".* Section 168(2) therefore also contemplates that a taxpayer is entitled to a tax credit in relation to tax collected under section 148 of the Ordinance. Consequently the Tax Department's reading that the definition of income under section 2(29) of the Ordinance read together with section 148 suggests that the advance tax collected under section 148 is final tax is incorrect. The advance tax collected under section 148 is an adjustable tax in view of section 168 of the Ordinance except to such extent that it otherwise provides. Section 148(7) does provide otherwise but the exception to the advance tax being adjustable is then qualified under Section 148(7) itself as well as under section 148(8). As section 148(8) is not relevant for our present purposes, we merely have to see the language of section 148(7) to determine the income against which tax collected under section 148 is to be treated as final tax. As explained above the language itself clearly provides a carve-out by explaining that the tax collected under section 148(1) is to be treated as a final tax in relation to such income of the importer that arises from the imports against the value of which advance tax has been deducted.

14. In view of the above reading of section 148(7), the first question to be determined by the Tax Department is whether an importer is deriving income that arises from the imports against the value of which advance tax has been collected. If the answer to such question is in the affirmative, the Department is then required to determine whether the imports in relation to which the advance tax has been collected fall within clauses (a) to (e) of section 148(7). If answer to the second question is in the negative, then income of the importer would not fall within the two carve-outs provided under section 148(7) and the advance tax collected from such imports would be deemed to be a final tax. If however the Tax Department comes to the conclusion that no income accrues to the importer from the imports against which advance tax has been collected, the tax collected would be adjustable tax and not a final tax. Likewise, even if there is income arising to the importer from the imports against which advance tax has been collected, but such imports fall within the category mentioned in clauses (a) to (e) of section 148(7), the advance tax collected would still be an adjustable tax.

> 15. Given that the question of any income arising to the applicants from the imports against which advance tax has been collected from them is a question of fact, as is the question as to whether the imports fall within clauses (a) to (e) of section 148(7), in the event that the Department is of the view that income does arise to the applicants from the imports, these questions of fact would need to be determined by the learned Tribunal. We therefore answer the question of law remanded by the august Supreme Court accordingly and remand the matter to the learned Tribunal for determination of questions of fact involved."

We have gone through the above findings and the interpretation so arrived at, in respect of Section 148(1) and (7) ibid and are in complete agreement with such findings, whereas, even otherwise, the same has also been maintained by the Hon'ble Supreme Court by refusing Leave to Appeal.

In view of such position, the above Question is answered accordingly. However, since for the present purposes the question of any income arising to the Applicant from the imports against which Advance Tax has been collected from them is a question of fact and similarly whether the imports fall within clause (a) to (e) of Section 148(7) ibid or for that matter, and as contended by the learned Counsel for the Applicant that the income in question is not directly related to the import in question, has to be determined by the Tribunal itself, and this is so, because findings of the learned Islamabad High Court has been maintained by the Hon'ble Supreme Court, whereby for this purposes, matter has been remanded to the Tribunal.

Accordingly, all impugned orders are hereby set aside; the Reference Applications are allowed to this extent, and the matter stands remanded to the Tribunal to give and arrive at a final conclusion as to the directions contained as above read with the directions in Paras 14 & 15 of the Judgment of learned Islamabad High Court.

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. A copy shall also be placed in all connected files.

ACTING CHIEF JUSTICE

J U D G E

Arshad/