ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

ITRA 218 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For orders on CMA No.2176/2025
2. For hearing of main case

27.11.2025

Mr. Faheem Ali Memon, advocate for the applicant
Mr. Muhammad Ramzan Awan, advocate for respondent

Per learned counsel the impugned order is devoid of any independent reasoning or conclusion. He states that the order comprises of mere reproduction and dissonant conclusion and the same is not a speaking order.

Learned counsel demonstrates that the impugned judgment is entirely predicated on reproduction and is devoid of any reasoning. He draws attention from pages 15 to 25 of the impugned judgment to demonstrate the same. The said constituent is reproduced herein below :

> “9. We have heard both the learned Representatives and perused the impugned order of the learned Commissioner IR (Appeals) and order Passed by the learned Deputy Commissioner IR. The point agitated is whether super tax is chargeable on Taxable income declared in Return of Income / Audited account or on imputable income computed u/s 2(28A) on the basis of tax deduction u/s 148 suffered on import of Tractors.
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> 10. The perusal of the ATIR order revealed that point for computation and charge of super tax has been discussed in details alongwith relevant provision of Income Tax Ordinance, 2001. The para 4 of the order is reproduced below for the sake of facilitation:-
>
> Quote
> The arguments placed at bar by both the parties have been heard and the available record has been perused. The law as given in Section 4B has been studied along with the findings of Honourable High Court as recorded in Intra Court Appeals by upholding the judgment dismissing the writ petition of the appellant/taxpayer. The relevant para no. 25 of the consolidated order/judgment in ICA No. 134758 of 2018 also disposing of the Intra Court Appeals of the appellant/taxpayer which for convenience is reproduced below, so as to highlight the strength granted to take up these appeals:-
>
> "25. Before parting with this judgment, it is clarified that our findings are confined to vires of Section 4B of the Ordinance of 2001, however, the parties are at liberty to raise any legal or factual objections against any proceedings initiated against them before the forum concerned, which are expected to be dealt with and decided in accordance with law."
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> The Learned AR has submitted that the findings of the Honourable High Court as applicable to his arguments on the constitutionality and validity of Section 4B shall be followed by ling his stance so as to be settled by the Honourable Higher judicial Fora, so his arguments on vires and legality of Section 4B being devoid of merit are dismissed.
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> The Learned AR by reading out the paras from the Judgments of Honourable High Court disposing of the writ petition and also ICA has submitted that the issue of imposition of Super Tax u/s.4B for creation of tax demand on the imputable income has neither been agitated so has not been decided thus is to be dilated upon.
> To verify this stance, the judgments of the Honourable High Court pertaining to assailing the provisions of Section 4B have been gone through and also the language/text of Section 4B, which for ready reference and convenience is reproduced as under:
>
> "[4B. Super tax for rehabilitation of temporarily displaced persons. (1) A super tax shall be imposed for rehabilitation of temporarily displaced persons, for tax years 2015 [andonwards], at the rates specified in Division IA of Part I of the First Schedule, on income of every person specified in the said Division.
>
> (2) For the purposes of this section. "income" shall be the sum of the following:
>
> i) profit on debt, dividend, capital gains, brokerage and commission;

ii) taxable income [(other than brought forward depreciation and brought forward business losses)] under section (9) of this Ordinance, if not included in clause (i);

iii) imputable income as defined in clause (28A) of section 2 excluding amounts specified in clause (i)and

iv) income computed under Fourth, Fifth, Seventh and Eighth Schedules.

3) The super tax payable under sub-section (1) shall be paid, collected and deposited on the date and in the manner as specified in sub-section (1) of section 137 and all provisions of Chapter X of the Ordinance shall apply.

4) Where the super tax is not paid by a person liable to pay it, the Commissioner shall by an order I writing, determine the super tax payable, and shall serve upon the person, a notice of demand specifying the super tax payable and within the time specified under section 137 of the Ordinance.

5) Where the super tax is not paid by a person liable to pay it, the Commissioner shall recover the super tax payable under subsection (1) and the provisions of Part IV, X, XI and XII of Chapter X and Part I of Chapter XI of the Ordinance shall, so far as may be, apply to the collection of super tax as these apply to the collection of tax under the Ordinance.

(6) The Board may, by notification in the official Gazette, make rules for carrying out the purposes of this section.]" A bare reading of this section is amply proving that the imputable income is the only yard stick for bringing a final/presumptive tax regime case within the scope of minimum thresh hold of Rs.500 million. In other words, a case where the imputable income is Rs. 500Million or more then irrespective of the declared income it would be liable to Super Taxu/s.4B. But here a caution is required to be exercised as in Sub-Section 1 of Section 4B, the tax rate to be applied is specified in Division II A of the Part I of the First Schedule, but due cognizance is to be taken that in the very beginning of the Division I of the Part I it is the application of tax rate to the taxable income and not the imputable income. Accordingly, here also in Division II in the case of companies the rate of tax is in respect of taxable income. Division -IIA of the Part I is a part of tax rates on taxable income and has nothing to do with final / presumptive tax regime. Had the intention of legislature was to fix a rate in respect of imputable income under final/ presumptive tax regime then rate of tax would not have been placed in sequence in Division IIA of Part-I. For developing a proper understanding of it, here it would be essential to reproduce the Division I. II and IIA of Par-I of the First Schedule:-

FIRST SCHEEDULE
PART I
RATES OF TAX
Division I
Rates of Tax for Individuals

[(1) The rates of tax imposed on the taxable income of every individual.....

Rates of Tax for Association of Persons

(2) The rates of tax imposed on the taxable income of every Association of Persons shall be.....

Division II
Rates of Tax for Companies

The rate of tax imposed on the taxable income of a company for the tax year 2007 and onward shall be 35%

[Provided that the rate of tax imposed on the taxable income of a company other than a banking company, shall be 34% for the tax year 2014]

[Provided further that the rate of tax imposed on the taxable income of a company, other than a banking company shall be 33% for the tax year 2015]

[Provided further that the rate of tax imposed on taxable income of a company, other than banking company shall be 32% for the tax year 2016, 31% for tax year 2017 and 30% for tax year 2018]

Division IIA

Rates of Super Tax

Person	Rate of supertax
Banking Company	4% of the income
Person other than a banking company Having income equal to or Exceeding Rs. 500 million	3% of the income
3% of the income	

A collective study of Section 4B and Division I to IIA of the Part-1 of First Schedule is abundantly making clear that the wisdom of the legislature was firstly to give the procedure for taking as liable to Super Tax which has explicitly been laid down in the main section by specifying that the categories of income/person falling in it with pinpointing that for the final/presumptive tax regime it would be imputable income becoming only measurement/ criteria for lodging in the courtyard of threshold of Rs. 500 Million. But here importantly for imposition of Super Tax u/s4B, it has clearly referred to Division IIA of Part-I of the First Schedule, where in its preamble i.e. Division I of the Part I. It is mandated that the imposition of tax rate is to be made on the taxable income and not merely income or the imputable income as tax liability is always in respect of the practically income earned primarily received and not the notional like imputable income. Further importantly here in these very appeals audited accounts have been submitted verifying the amounts of actually earned received income whereas nothing is provided in law as to how these figures being based on authenticated accounts could be made liable to rejection. Evidently making the law as inconclusive uncertain and ambiguous, thus in the presence of it the imposition of such tax has legally become not sustainable. Further adversely adding to it is the fact that the tax so arrived at has become much more than the declared taxable income, whereas no absurdity could be attached to law for imposing the tax. It has clearly been held by the Honourable Highest Judicial Fora that only by definitely precise language the tax could be imposed by stopping the passage of ambiguity, doubt, indefiniteness and uncertainty. The respondent/ department on its own in the instant case of taxpayer/appellant for tax year 2018 has simply imposed the super tax u/s4B on the imputed income without adding to it the declared taxable income, which is making it manifest that the ambiguity in law and the confusion in facts and circumstances has become clear in the minds of the respondent department when a departure in the treatment accorded to taxpayer in early three years have to be made, which is proving that the law is not being properly implemented in its letter and spirit due to its improper interpretation.

The Honourable Supreme Court held in case cited as 2001 SCMR 103 as under:

"Absurdity in a provision-initial presumption is that an absurdity is not intended by the law maker Interpretation which leads to manifest absurdity, should, if possible, be avoided---If proposition accepted, leads to absurd result there is always a presumption against such absurdity"

It is quite pertinent to mention here that concept of "Imputable Income"" is not an alien in presumptive/final regime as was brought in statute on introduction of presumptive/Final Tax regime through amendments Repealed Income Tax Ordinance, 1979, but importantly to be noted that it was as beneficial term so as to allow/entitle the taxpayer the relief by allowing in the shape of credit for the income permitted to be worked back from the amount of tax withheld as deduction at source even as a set of against any concealment of income, investment, expenditure etc. It was in no way taken as making liable to tax the amount arrived at from the tax already paid on the gross receipts taken as income for deducting the tax thus would not be legal as the law is what is common sense and/or logic, accordingly the impugned treatment did not qualify the basic test of jurisprudence. In very plain words it could be stated that the scheme of Presumptive/Final Tax Regime makes it obligatory that irrespective of finally determined income or loss at the close/end of accounting year, still at a specific rate the tax is to be withheld / deduction is to be make from each and every gross amount against sales or receipts without permitting any deduction for the expenses or allowances. But here before us the respondent/department for imposing the Super Tax has worked back a figure by terming it as imputable income for imposing Super Tax on imaginary income which is far away from reality but arrived at from tax paid as final liability. The Honourable Supreme Court of Pakistan in its landmark judgment cited as Elahi Cotton Mills has only legitimized the imposition of income tax in this manner through withholding of income tax i.e. deduction of tax on payments for the gross sales receipts by straightway taking it as income without allowing deduction for direct or indirect expenses, thus upholding the Final/presumptive Tax Regime, but the vital point/factor to be noted is the plain fact that the none of the Honourable Higher Judicial Fora has so far permitted that the final tax so withheld could become a further basis for working back income for imposition of tax on such worked back amount a figure which could be a day dreaming extremely imaginary with un-deniably as practically nonexistent in its nature/ character, then such a figure with such characteristic and base can how be charged to tax in the hands of taxpayer, the appellant.

So keeping in view the detailed contemplations supra, the glaring ambiguities in-implementing the law, mixing up the procedural provisions with the charging provision by the Respondent/ Department for imposing the tax and inconsistencies coupled with inadequacies of law, implementation of charging provisions causing absurdity, we feel inclined to direct that Super Tax u/s 4B be charged on the declared taxable income in both the tax years as the imputable income has relevance only for bringing the Final/Presumptive tax cases within the fore walls of the threshold of Super Tax.

The Respondent/Department is directed to create tax demand by applying the prescribed rate to the taxable income as per income tax return/ statement being based on the audited accounts by strictly following the scheme of law coming into existence by the wisdom of legislature.

Un-quote

11. We respectfully following the above decision of the ATIR, the appeals filed by the Appellant are allowed and orders passed by both the lower authorities are vacated"

The Appellate Tribunal is the last fact-finding forum in the statutory hierarchy; therefore, it is incumbent upon it to render independent deliberations and findings on each issue. The manner in which the appeals in general are to be addressed has been emphasized by the Supreme Court in the judgment reported as 2019 SCMR 1626. This High Court has consistently maintained that the Appellate Tribunal is required to proffer independent reasons and findings, and in the absence thereof a perfunctory order could not be sustained. Reliance is placed on the judgment dated 02.10.2024 in SCRA 1113 of 2023 and judgment dated 27.08.2024 in SCRA 757 of 2015. Earlier Division Bench judgments have also maintained that if the impugned order is discrepant in the manner as aforesaid, the correct course is to remand the matter for adjudication afresh. Reliance is placed on the judgment dated 10.12.2024 in ITRA 343 of 2024.

We are of the considered view that the impugned judgment could not be considered to be a speaking order and is *prima facie* devoid of any independent reasoning etc. The entire judgment comprises essentially of reproduction and is crowned with a dissonant conclusion. Hence, no case is set forth to sustain the impugned judgment, which is hereby *set aside* and the matter is remanded back to the Appellate Tribunal for adjudication afresh in accordance with law.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001.

Judge

Judge

Amjad