IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Justice Mohammad Abdur Rahman
Justice Dr. Shah Nawaz Memon

Income Tax Reference Application No. 63 of 2019
The Commissioner Inland Revenue, Zone-III, LTU, Karachi *Vs.* M/s Premier Oil Pakistan Kirthar B.V. (formerly PKP Kirthar 2 B.V.)

and

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Date of hearing	22.09.2026.
Date of judgment	10.11.2026.
Applicant	Through Mr. Irfan Mir Halepota, Advocate.
Respondent	Through M/s Hamza Waheed and Sami ur Rehman, Advocates.

J U D G M E N T

DR. SHAH NAWAZ MEMON, J.: — These two references under section 133 of the Income Tax Ordinance, 2001 (the "Ordinance") arise out of two orders of the learned Appellate Tribunal Inland Revenue, Karachi Bench (the "Tribunal"), passed in the respondent's own appeals for tax years 2008 and 2009. The parties are the same, the facts overlap, and the two questions proposed are identical in both references. We therefore decide them by this common judgment.

I. FACTS OF THE CASE

2. The respondent is the Pakistan branch of PKP Kirthar 2 B.V., a company incorporated in the Netherlands and since renamed Premier Oil Pakistan Kirthar B.V. It is engaged in the exploration for and production of petroleum. By an assignment from its affiliate, Premier Oil Pakistan Offshore B.V. ("POPO"), it came to hold a 12.5 per cent working interest in the Offshore Indus-E concession (Block 2365-1), of which Shell was the operator. The one well drilled in late 2007 was a dry hole, and the concession was surrendered on 31.03.2008.

3. For tax year 2008 (accounting period ended 31.12.2007), the deemed assessment was amended under section 122(5A)[1] by the Additional

[1]Section 122(5A) of the Ordinance: "(5A) Subject to sub-section (9), the Commissioner may amend, or further amend, an assessment order, if he considers that the assessment order is erroneous in so far it is prejudicial to the interest of revenue."

Commissioner, Audit Division-I, LTU, Karachi, by order dated 26.05.2010. Among other things, he disallowed exploration expenditure of Rs.887,972,000 and one half of the head office expenditure, that is, Rs.46,056,000. Of the exploration expenditure, Rs.712,070,000 had been paid to POPO on the assignment, being costs incurred by POPO on the concession from April 1998 to December 2007; the balance of Rs.175,902,000 was said to have been incurred after the respondent acquired its interest. The officer held that no verifiable evidence of incurrence had been produced, that the larger sum was POPO's expenditure, and that the assignment agreement took effect only on 11.03.2008, after the close of the accounting year.

4. For tax year 2009 (calendar year 2008), the deemed assessment was amended under section 122(1)[2] by the Deputy Commissioner by order dated 31.05.2010. Of exploration expenditure of Rs.31,440,000 relating to the quarter ended 31.03.2008, the officer treated only 21 of the 91 days as falling after 11.03.2008 and disallowed Rs.24,185,000. He also disallowed one half of the head office expenditure of Rs.121,997,000, that is, Rs.60,998,500.

5. In both years the head office claim was supported by reports of Deloitte LLP, London, which the officers found insufficient. For tax year 2008, the report was dated 05.05.2009 on an engagement of 01.05.2009 and, in the officer's view, did not state the period it covered. For tax year 2009, it was a limited-scope "report of factual findings", which disregarded differences below USD 100,000, gave no basis of allocation, and referred to charges from the ultimate parent without detail. The respondent's answer was that its Pakistan branch was the head office's only branch, that the audited accounts of the head office had been furnished, and that Article 7(3) of the Pakistan-Netherlands tax treaty, given effect by section 107,[3] allowed the expenses without the limitation in section 105(2).

6. The learned Commissioner Inland Revenue (Appeals-IV), Karachi maintained these disallowances in both years through a combined order dated 24.05.2012. On further appeal, the Tribunal deleted them, by order dated

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[2]Section 122(1) of the Ordinance: "(1) Subject to this section, the Commissioner may amend an assessment order treated as issued under section 120 or issued under section 121, by making such alterations or additions as the Commissioner considers necessary."

[3]Section 107(2) of the Ordinance, so far as relevant: "(2) Where any agreement is made in accordance with sub-section (1), the agreement and the provisions made by notification for implementing the agreement shall, notwithstanding anything contained in any law for the time being in force, have effect in so far as they provide for, (a) relief from the tax payable under this Ordinance; (b) the determination of the Pakistan-source income of non-resident persons; (c) where all the operations of a business are not carried on within Pakistan, the determination of the income attributable to operations carried on within and outside Pakistan, or the income chargeable to tax in Pakistan in the hands of non-resident persons, including their agents, branches, and permanent establishments in Pakistan; ..." Article 7(3) of the Pakistan-Netherlands Convention reads: "3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere."

23.10.2018 in ITA No.613/KB/2012 (tax year 2008) and order dated 19.10.2018 in ITA No.614/KB/2012 (tax year 2009). The other grounds decided by the Tribunal, some of them against the respondent, are not before us.

II. THE QUESTIONS PROPOSED

7. The references were admitted on 14.10.2025 on the following questions, proposed in identical terms in both:

> (1) Whether under the facts and circumstances of the case the learned Tribunal was justified to delete the disallowance of exploration expenditure as deduction while ignoring that the evidence of incurrence of expenditure was not furnished to the department.
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> (2) Whether under the facts and circumstances of the case the learned Tribunal, while relying on earlier judgments of ATIR, was justified to delete the disallowance of head office expenditure as deduction while holding that the head office certificate is sufficient to substantiate the incurrence and relevance of said expenditure and thereby ignoring the provisions of section 174 of the Income Tax Ordinance, 2001?

III. SUBMISSIONS

8. Mr. Irfan Mir Halepota, learned counsel for the applicant, submitted that the burden of proving a deduction lies on the taxpayer, and that the Tribunal deleted the exploration disallowance although the respondent had not shown that it, rather than POPO, incurred the expenditure within the relevant tax year. On the second question, he submitted that the Tribunal decided the head office issue only by following its earlier orders, without examining the reports produced for these years and without regard to section 174 of the Ordinance.

9. Learned counsel for the respondent submitted that the first question turns on a determination of fact made by the Tribunal, and that it is settled that this Court does not decide questions of fact in a reference. He added that the same expenditure is allowed to all other exploration companies, and that the respondent alone has been treated differently. On the second question, he submitted that the matter had been exhaustively discussed in the earlier orders of the Tribunal relied upon, and that it is, again, a determination of fact which only the Tribunal could make. In rebuttal, learned counsel for the applicant reiterated that the questions are not merely of fact, since whether the determination was correctly made is itself a question of law.

IV. THE SCOPE OF THE REFERENCE JURISDICTION

10. A reference under section 133 is not an advisory jurisdiction. It is, in effect, an appeal on questions of law arising out of the Tribunal's order.[4] The statute itself says so: the High Court "shall decide the question of law" raised by the reference, and the Tribunal's order "shall stand modified accordingly".[5] Any question of law arising out of the order may be raised, whether or not it was urged below, but the facts are to be taken as the Tribunal has recorded them.[6] The Tribunal remains the final authority on facts. Its findings are not disturbed unless there was no evidence on which it could reach them, or they are perverse or rest on surmise and conjecture; and where a question cannot be decided without facts which the Tribunal has not found, the course is to send the matter back to it.[7] It is within these limits that the two questions are examined.

V. THE FIRST QUESTION: EXPLORATION EXPENDITURE

11. The first question proceeds on a premise, namely that the evidence of incurrence "was not furnished to the department". The Tribunal found otherwise. In both years it recorded that the respondent had, by letter dated 25.05.2010, placed before the assessing officer the production sharing and assignment agreements and the operator's cost statements, and that these, together with the audited joint venture accounts of the concession, were also before the first appellate authority. It noted that note 1.6 of the audited joint venture accounts records the Government's approval, conveyed on 11.09.2007, to the assignment of POPO's entire working interest to the respondent, and that the returns and accounts of POPO show no claim by POPO for the same expenditure. It also recorded that the learned departmental representative did not dispute this material, and accepted that claims of other working interest owners, including a co-venturer holding the same 12.5 per cent share, had been allowed on evidence of the same kind.

12. Whether a document was produced, and whether the material produced proves that an expense was incurred, are matters of fact. The Tribunal examined the material and reached a finding on it. The question, as framed, does not say that the finding rests on no evidence, or that any material document was misread; it asks us, in substance, to hold that the evidence was

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[4] *Rafeh Limited* [PLD 2020 SC 518].

[5] Section 133(7) of the Ordinance: "(7) The High Court upon hearing a reference under this section shall decide the question of law raised by the reference and pass judgment thereon specifying the grounds on which such judgment is based and the Appellate Tribunal's order shall stand modified accordingly." Sub-section (5) of the section as substituted by the Finance Act, 2005, which governed these references when filed, was in the same terms.

[6] *Squibb Pakistan* [2017 SCMR 1006].

[7] *Qadbros Engineering* [2023 SCMR 939]; *Khudadad Heights* [2025 SCMR 716]; on remand where the facts necessary to decide the question have not been found, *Lakhani Securities* [2015 PTD 401].

not furnished. That would require us to reappraise the evidence, which a reference does not permit. The submission in rebuttal, that the correctness of the determination is itself a question of law, does not alter the character of the question; a finding of fact becomes open in a reference only where it is shown to rest on no evidence, to be perverse, or to have been reached on a wrong legal test, and no such case was made out. Our answer rests on the nature of the finding, and not on the respondent's plea of parity with other exploration companies, on which we express no view. The applicant has not proposed any question on the construction of the assignment agreement, or on the admissibility of the expenditure under the Fifth Schedule, and those matters are left open.

13. For tax year 2008 there is a further aspect. The Tribunal also held that the notice issued under section 122(5A) did not identify any error in the deemed assessment, and it deleted the disallowance on that footing as well, following a Larger Bench of the Tribunal. That view is independent of the evidential finding, and no question has been proposed against it. An answer in the applicant's favour on the first question would not, for tax year 2008, have restored the addition in any case.

14. The first question is, accordingly, answered in the affirmative, against the applicant and in favour of the respondent.

VI. THE SECOND QUESTION: HEAD OFFICE EXPENDITURE

15. Section 105 governs the computation of the income of a permanent establishment of a non-resident. Clause (b) of sub-section (1) allows, subject to the Ordinance, expenses incurred for the purposes of the business of the permanent establishment, including executive and administrative expenses, whether incurred in Pakistan or elsewhere; sub-section (2) limits the deduction for head office expenditure by reference to the ratio of the establishment's turnover to the worldwide turnover.[8] Section 174 requires a taxpayer to maintain prescribed records, and empowers the Commissioner to disallow or reduce a claim for a deduction where the taxpayer is unable, without reasonable cause, to provide a receipt or other record or evidence of the

[8]Section 105 of the Ordinance, so far as relevant: "(1) ... (b) subject to this Ordinance, there shall be allowed as deductions any expenses incurred for the purposes of the business activities of the permanent establishment including executive and administrative expenses so incurred, whether in Pakistan or elsewhere; ... (2) No deduction shall be allowed in computing the income of a permanent establishment in Pakistan of a non-resident person chargeable to tax under the head "Income from Business" for a tax year for head office expenditure in excess of the amount as bears to the turnover of the permanent establishment in Pakistan the same proportion as the non-resident's total head office expenditure bears to its worldwide turnover. (3) In this section, "head office expenditure" means any executive or general administration expenditure incurred by the non-resident person outside Pakistan for the purposes of the business of the Pakistan permanent establishment of the person, ..."

transaction giving rise to it.[9] Read together, these provisions require the permanent establishment to show that the head office expenditure was incurred, and that it was incurred for the purposes of the Pakistan business, after which the limit in section 105(2) applies, subject to the respondent's case under the treaty and section 107.

16. Whether a report of independent accountants discharges that burden is, in each year, a question of fact, to be decided on what the report says and what accompanies it. The officers gave reasons specific to each year, which we have summarised in paragraph 5. The respondent answered them with material of its own. These were the matters on which the claim turned, and which called for decision in appeal. Learned counsel for the respondent is right that the sufficiency of the reports is a question of fact for the Tribunal. The question before us, however, is anterior to that: whether the Tribunal decided it at all on the material of each year. That is a question of law.

17. In each order the Tribunal, after recording the respondent's submissions, disposed of the ground in these words:

> "Since this matter has already been decided by the divisional benches of the Tribunal, therefore, we agree with the decisions cited supra and consider it appropriate to follow the same. Thus, the disallowance is being deleted."

18. The orders so followed related to other tax years of the respondent and to other exploration companies, and the passage adopted from them turned on a different notice and a different certificate. Proceedings for each tax year are distinct, and the principle of res judicata does not apply to them as it does to civil proceedings. An earlier decision on similar facts is entitled to respect, and consistency is a value the Tribunal rightly weighs; but it does not take the place of a decision on the material of the year under appeal, for the assessment of each year rests on the facts of that year.[10] An appellate order must also show that the grounds urged were considered, and why they were accepted or rejected.[11] The objections taken by the officers to the Deloitte

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[9]Section 174 of the Ordinance, as it stood for tax years 2008 and 2009, so far as relevant: "(1) Unless otherwise authorised by the Commissioner, every taxpayer shall maintain in Pakistan such accounts, documents and records as may be prescribed. (2) The Commissioner may disallow or reduce a taxpayer's claim for a deduction if the taxpayer is unable, without reasonable cause, to provide a receipt, or other record or evidence of the transaction or circumstances giving rise to the claim for the deduction. ... (4) For the purpose of this section, the expression "deduction" means any amount debited to trading account, manufacturing account, receipts and expenses account or profit and loss account." The words "or reduce" and sub-section (4) were inserted by the Finance Act, 2003.

[10]*Wahiduzzaman* [PLD 1965 SC 171]; *Farrokh Chemical Industries* [1992 SCMR 523], where an earlier decision is held to be no bar if it was not reached after proper enquiry or if fresh material bears on the point; *Karachi Properties* [2004 PTD 948].

[11]Section 24A(2) of the General Clauses Act, 1897: "(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of the order or, as the case may be, the direction to the person affected prejudicially." See also *Ghani Glass* [2019 PTD 1559].

reports for these two years, and the respondent's answers to them, do not appear to have been examined.

19. Other matters also call for decision. Having found the reports insufficient, the officers disallowed one half of the claim "keeping in view the nature of expenses". Section 174(2) does allow a claim to be reduced as well as disallowed, but only where the taxpayer is unable, without reasonable cause, to provide the evidence; whether that condition was met, and whether the reduction of one half rests on the material, will also need examination, as will the limit in section 105(2). For tax year 2008, the respondent objected that the notice referred to section 102,[12] a provision concerned with the foreign-source salary of resident individuals; the Tribunal noted the objection but did not decide it. The treaty argument, which turns on Article 7(3) of the Convention read with paragraph II of its Final Protocol,[13] was likewise not dealt with. All these are for the Tribunal to decide in the first instance.

20. The second question is, accordingly, answered in the negative: the Tribunal was not justified in deleting the disallowance of head office expenditure only by following its earlier orders, without examining the material of each year in the light of sections 105 and 174 of the Ordinance. We express no opinion on the merits of the claim.

VII. THE ANSWERS TO THE QUESTIONS

21. The questions are answered as follows:

> Question (1): In the affirmative, against the applicant and in favour of the respondent.
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> Question (2): In the negative, in favour of the applicant and against the respondent, in the terms stated in paragraph 20.

VIII. ORDER

22. Both references are disposed of in the above terms. The deletion of the disallowance of exploration expenditure in both tax years is maintained. The ground relating to head office expenditure in ITA No.613/KB/2012 and ITA No.614/KB/2012 is remanded to the Tribunal, which shall decide it afresh by a reasoned order on the record of each year, after hearing both sides, in the light of this judgment preferably within a period of 30 days from the date of the receipt of this order.

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[12]Section 102 of the Ordinance bears the heading "Foreign source salary of resident individuals".

[13]Paragraph II of the Final Protocol to the Convention: "In the application of paragraph 3 of Article 7 no deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. ..."

23. The interim order dated 14.10.2025 stands recalled. There shall be no order as to costs.

24. A copy of this judgment shall be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal Inland Revenue, as required by section 133(8) of the Ordinance.[14]

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Announced by:

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[14]Section 133(8) of the Ordinance: "(8) The High Court shall send a copy of the judgment under the seal of the High Court to the Appellate Tribunal."