IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Justice Mohammad Abdur Rahman
Justice Dr. Shah Nawaz Memon

I.T.R.A No. 90 of 2021

Commissioner Inland Revenue, Legal Zone, Medium Taxpayers Office, Karachi
Vs. M/s. Mapak Edible Oils (Pvt) Limited

Date of hearing:	21.09.2026
Date of judgment:	10.11.2026
Applicant:	Through Mr. Irfan Mir Halepota, Advocate.
Respondent:	Through M/s. Abdul Raheem Lakhani and Atta Muhammad Qureshi, Advocates.

J U D G M E N T

DR. SHAH NAWAZ MEMON, J.: — This reference under section 133 of the Income Tax Ordinance, 2001 ("the Ordinance") has been brought by the department against the order of the learned Appellate Tribunal Inland Revenue, Karachi Bench, dated 12.02.2021 in ITA No. 435/KB/2019, relating to tax year 2016. The principal question is how "total equity" is to be measured when an industrial undertaking established before 01.07.2011 computes its tax credit under section 65E of the Ordinance; the remaining questions concern the rule of construction to be applied and the Workers' Welfare Fund.

I. FACTS OF THE CASE

2. The respondent, a private limited company, refines and markets edible oils. Its return for tax year 2016, declaring income of Rs. 775,177,854, was selected for audit and the deemed assessment was amended on 01.03.2018. The respondent had issued fresh shares for cash of Rs. 373,000,000 to finance investment in plant and machinery, and claimed the credit under section 65E at 35.93% of the tax payable. That figure was arrived at by setting the new equity against paid up capital alone (Rs. 665,200,000 plus Rs. 373,000,000, that is, Rs. 1,038,200,000). The assessing officer, following the determination made for tax year 2015 and confirmed by the learned Commissioner (Appeals) in appeal order No. 07 dated 12.04.2017, included the unappropriated profit of Rs. 1,520,639,000 in the denominator, so that total equity came to Rs. 2,558,839,000 and the credit was restricted to 14.58%.

3. The assessing officer also charged the Workers' Welfare Fund at 2% under the Workers' Welfare Fund Ordinance, 1971. The learned

Commissioner (Appeals), by order No. 09, upheld the restriction of the credit as consistent with accounting discipline, and upheld the levy of the Fund, taking the view that the federal Ordinance of 1971 continued to hold the field notwithstanding the Sindh Workers' Welfare Fund Act, 2014.

4. Before the learned Tribunal only two grounds were pressed. The learned Tribunal accepted the respondent's ratio of 35.93%, reasoning that "equity" in section 65E refers to share capital, that the inclusion of accumulated profit would place profit making units at a disadvantage, and that any ambiguity must be resolved in favour of the taxpayer. On the Workers' Welfare Fund it held the matter covered by decisions of this Court on the effect of the Sindh enactment, and vacated the action of the authorities below.

II. THE QUESTIONS PROPOSED

5. By order dated 10.11.2025 the following reformulated questions were framed:

> A. Whether under the facts and circumstances of the case, the learned ATIR Karachi has erred in law to hold that the retained earnings / accumulated profits does not form part of the total equity in violation of Section 65E(7) of ITO, 2001?
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> B. Whether under the facts and circumstances of the case, the learned Tribunal has erred in law to ignore the settled principles of the law as settled at 2020 SCMR 1157 wherein it is held that the interpretation relating to exemption is to be given in favour of revenue?
>
> C. Whether under the facts and circumstances of the case, ATIR was erred in law to allow credit of unpaid WWF in violation of section 60A of the ITO, 2001?

III. SUBMISSIONS

6. Mr. Irfan Mir Halepota, learned counsel for the applicant department, contended that section 65E(3)[1] measures the credit by the proportion which new equity bears to "the total equity including new equity"; that "total equity" is not defined and must carry its settled accounting meaning, which takes in reserves and unappropriated profit; that section 65E(7)[2] defines only "new equity" and lends no support to confining "total

[1]Section 65E(3) is reproduced in paragraph 9 below.

[2]**Section 65E(7)**, added by the Finance Act, 2012: "For the purposes of this section, 'new equity' means equity raised through fresh issue of shares against cash by the company and

equity" to paid up capital; and that a tax credit, being in the nature of an exemption, is to be construed in favour of the revenue, for which he relied on the authority referred to in Question B. On the Workers' Welfare Fund he submitted that section 60A[3] allows a deduction only for an amount actually paid during the year.

7. Mr. Abdul Raheem Lakhani, learned counsel for the respondent, supported the order of the learned Tribunal. He contended that section 65E is concerned with fresh capital brought in through the issue of shares, so that "equity" in sub-section (3) must be understood as share capital and the new equity compared with the paid up capital alone; that the inclusion of accumulated profit would penalise a profitable undertaking, which could not have been intended; and that, any doubt being resolved in favour of the taxpayer, the ratio of 35.93% was rightly allowed. On the Workers' Welfare Fund he submitted that, after the Sindh Workers' Welfare Fund Act, 2014, the levy under the federal Ordinance could not be sustained in Sindh, a matter he said was covered by decisions of this Court.

IV. THE SCOPE OF THE REFERENCE

8. This Court, in its reference jurisdiction, decides questions of law arising out of the order of the learned Tribunal, upon the facts found by the Tribunal, and the Tribunal's order then stands modified in accordance with the judgment.[4] A question is one "arising out of" that order where it was raised before, or decided by, the learned Tribunal; a question that the Tribunal neither had before it nor determined does not answer that description.[5]

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shall not include loans obtained from shareholders or directors: Provided that short term loans and finances obtained from banking companies or non-banking financial institutions for the purposes of meeting working capital requirements shall not disqualify the taxpayer from claiming tax credit under this section."

[3]**Section 60A**, as it stood for tax year 2016: "A person shall be entitled to a deductible allowance for the amount of any Workers' Welfare Fund paid by the person in tax year under Workers' Welfare Fund Ordinance, 1971 (XXXVI of 1971)." The words extending the allowance to Workers' Welfare Fund paid under provincial laws were added by the Finance Act, 2021.

[4]**Section 133(7) and (8)**, as now in force (formerly section 133(5)): "(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. (8) The High Court shall send a copy of the judgment under the seal of the High Court to the Appellate Tribunal."

[5]*Squibb Pakistan* [2017 SCMR 1006]; *Scindia Steam Navigation* [AIR 1961 SC 1633], where a question was held to arise out of the order of the Tribunal only if it was raised before, or dealt with by, the Tribunal.

V. "TOTAL EQUITY" UNDER SECTION 65E

9. There is no dispute that the respondent was entitled to the credit, or that Rs. 373,000,000 was new equity within section 65E(7). The only issue is the denominator. Sub-section (3), as it stood for tax year 2016, reads:

> "(3) In all other cases, the **credit** under this section **shall be** such proportion of the tax payable, including minimum tax and final taxes payable under any of the provisions of this Ordinance, as is **the proportion between the new equity and the total equity including new equity**."

The Ordinance defines the first of the two expressions, "new equity", but not the second.

10. Expressed arithmetically, the sub-section provides:

$$\text{Tax credit} = \text{Tax payable} \times \frac{\text{New equity}}{\text{Total equity including new equity}}$$

Since the total equity is made up of the equity that existed before the fresh issue (the old equity) and the new equity, the same rule may be written as:

$$\text{Tax credit} = \text{Tax payable} \times \frac{\text{New equity}}{\text{Old equity} + \text{New equity}}$$

The tax payable and the new equity of Rs. 373,000,000 are common ground. The formula thus reduces the dispute to a single element, the old equity: whether it comprises the paid up capital alone, as the respondent contends, or the paid up capital together with the retained profits, as the department contends.The figures are those taken in the determination for tax year 2015, which the assessing officer adopted for the year before us. The respondent's equity was made up of three components: (a) its paid up capital of Rs. 665,200,000 as on 01.07.2012, being the shares in issue before the expansion; (b) its unappropriated profit of Rs. 1,520,639,000 up to 30.06.2012, being profits earned in earlier years and kept in the business rather than distributed to the shareholders; and (c) the fresh shares of Rs. 373,000,000 issued for cash as on 30.06.2013 to finance the plant and machinery. Each side treats them as follows:

Component of equity	Amount (Rs.)	Respondent	Department
(a) Paid up capital as on 01.07.2012	665,200,000	Old equity	Old equity
(b) Unappropriated profit up to 30.06.2012	1,520,639,000	Left out	Old equity
(c) Fresh shares issued for cash as on 30.06.2013	373,000,000	New equity	New equity
Total equity including new equity		**1,038,200,000**	**2,558,839,000**

Putting these figures into the formula, the two positions yield:

On the respondent's view:

$$\frac{373{,}000{,}000}{665{,}200{,}000 + 373{,}000{,}000} = \frac{373{,}000{,}000}{1{,}038{,}200{,}000} = 35.93\%$$

On the department's view (old equity of 665,200,000 + 1,520,639,000 = 2,185,839,000):

$$\frac{373{,}000{,}000}{2{,}185{,}839{,}000 + 373{,}000{,}000} = \frac{373{,}000{,}000}{2{,}558{,}839{,}000} = 14.58\%$$

The whole controversy therefore turns on whether the unappropriated profit of Rs. 1,520,639,000 is part of the "total equity" in the denominator.

11. Where a fiscal statute uses a word of settled commercial meaning without defining it, the word bears that meaning; the court neither enlarges nor cuts it down by presumption in favour of either side.[6] "Equity" in the language of commerce and accounting is the residual interest of the owners in the assets of the company after its liabilities are met, and comprises issued capital together with reserves, including profits retained in the business.[7] Unappropriated profit belongs to the shareholders as much as the capital they subscribed; it is equity in every sense in which that word is ordinarily used.

12. The structure of section 65E points the same way. Sub-section (7) treats "equity" as the genus and carves out "new equity" as a species, identified by the manner in which it is raised, namely a fresh issue of shares for cash. The legislature defined the species because it needed to; it left the genus undefined because its meaning was already settled. The qualifying word "total", followed by "including new equity", shows that the denominator is the whole of the company's equity, of which the new

[6] *Cape Brandy Syndicate* [1921] 1 KB 64; *Ramavatar Budhaiprasad* [AIR 1961 SC 1325], where an undefined word in a fiscal statute was given the meaning it bears in common and commercial parlance.

[7] *Conceptual Framework for Financial Reporting* (IASB, 2018), para 4.63: "Equity is the residual interest in the assets of the entity after deducting all its liabilities."; IAS 1, *Presentation of Financial Statements*, para 54(r), which requires the statement of financial position to present "issued capital and reserves attributable to owners of the parent".

equity is one part. Had the legislature intended to compare the fresh issue only with the paid up capital, it would have said so; it chose instead the wider expression.

13. Read in this way, the proportion in sub-section (3) serves an intelligible purpose. It measures the share of the undertaking's owners' funds that has come from fresh cash, and grants the credit in that proportion. A company that has financed itself to a large extent by retaining its profits has, to that extent, been funded by old money, and the provision gives credit only for the part attributable to new money. That is a comparison of like with like: in the formula above, the new equity in the numerator is itself a part of the denominator, and the denominator must therefore be the whole of the company's equity in the same sense. With respect, the consequence that a company with larger accumulated profits obtains a smaller proportion is not an absurdity which would justify departing from the words used; it is the outcome the proportion is designed to produce. The same measure would, in the converse case, yield a larger proportion to a company whose reserves had been eroded by losses.

14. The learned Tribunal also drew support from sub-section (3A).[8] That sub-section was inserted by the Finance Act, 2016, and prescribes a formula of a different character, in which the denominator is the amount invested in plant and machinery and not equity at all. The assessment for tax year 2016, both appellate orders and the parties' own computations all proceeded under sub-section (3) as it then stood. Sub-section (3A) does not, therefore, inform the meaning of "total equity" for the year before us.

15. It follows that, for the purposes of section 65E(3), retained earnings and accumulated or unappropriated profits form part of the total equity of the company. The proportion of 14.58% determined in the amended assessment accords with the provision; the proportion of 35.93%, which leaves those profits out of account, does not.

VI. THE RULE OF CONSTRUCTION IN QUESTION B

16. The learned Tribunal invoked the principle that a genuine ambiguity in a taxing provision is resolved in favour of the subject,[9] while the

[8]**Section 65E(3A)**, inserted by the Finance Act, 2016, which at the same time substituted the words "sub-section (3A)" for "this section" in sub-section (3): "The amount of a person's tax credit allowed under sub-section (1) for a tax year shall be computed according to the following formula, namely: A x (B/C) where A is the amount of tax assessed to the person for the tax year before allowance of any tax credit for the tax year; B is the equity raised through issuance of new shares for cash consideration; and C is the total amount invested in the purchase and installation of plant and machinery for the industrial undertaking."

[9]The learned Tribunal referred to [2005 SCMR 186], [2002 PTD 877], *Mehran Associates* [(1992) 66 Tax 246] and [2008 PTD 1693].

department invokes the opposite principle applicable to exemptions. Both rules come into play only where, after the ordinary tools of construction have been applied, a real doubt remains.[10] For the reasons given above, no such doubt arises here: the meaning of "total equity" follows from the words of the provision, read in their commercial sense and in the setting of the section. As the answer to Question A rests on that construction and not on either presumption, Question B does not call for a separate answer.

VII. THE WORKERS' WELFARE FUND

17. Question C proceeds on the footing that the learned Tribunal allowed a deduction for an unpaid provision in disregard of section 60A. The record does not bear that out. While the provision of Rs. 17,313,000 was confronted to the respondent at the audit stage, the additions actually made in the amended assessment totalled Rs. 23,654,198 and comprised four items, relating to contract labour, salaries paid in cash, expenses paid in cash and unverified expenses; the provision for the Fund is not among them. What the assessing officer did was to charge the Fund at 2%, amounting to Rs. 15,976,641, under the federal Ordinance of 1971. The respondent's grievance before both appellate forums was directed against that levy.

18. Accordingly, the learned Commissioner (Appeals) examined whether the federal Ordinance continued to apply in Sindh after the provincial enactment, and the learned Tribunal decided the same point in the respondent's favour, relying on decisions of this Court on the effect of the Sindh Workers' Welfare Fund Act, 2014.[11] Neither forum was asked to consider, and neither considered, whether an unpaid amount could be deducted under section 60A. The question so framed does not, therefore, arise out of the order of the learned Tribunal, and we decline to answer it. No question has been proposed on the point the learned Tribunal actually decided, and we express no view upon it.

VIII. THE ANSWERS TO THE QUESTIONS

19. The questions are answered as follows:

> **Question A:** In the affirmative, in favour of the applicant department and against the respondent. Retained earnings and accumulated profits form part of "the total equity

[10] *Cape Brandy Syndicate* [1921] 1 KB 64; *Dilip Kumar & Co.* [(2018) 9 SCC 1].
[11] The learned Tribunal referred to [2018 CLD 1088] and [2017 PTD 1].

including new equity" for the purposes of section 65E(3) of the Ordinance.

Question B: Does not call for a separate answer, in view of the answer to Question A.

Question C: Declined, as it does not arise out of the order of the learned Tribunal.

IX. ORDER

20. The reference application is disposed of in the above terms. The order of the learned Tribunal dated 12.02.2021 in ITA No. 435/KB/2019 shall stand modified to the extent of the answer to Question A, and the credit under section 65E for tax year 2016 shall be computed accordingly. There shall be no order as to costs.

21. A copy of this judgment shall be sent under the seal of this Court to the learned Appellate Tribunal Inland Revenue, as required by section 133(8) of the Ordinance.

JUDGE

JUDGE

Karachi, dated: ___ day of November, 2026

Announced by:

JUDGE

JUDGE