

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

M/s Medequips **Versus** The Commissioner Inland Revenue and 3 others

24.09.2024 Mr. Shahbaz Butt, learned Advocate for the applicant.
Mr. Tabassam Ali, learned Legal Advisor for the respondent-department.

By way of this single order we intend to decide the titled reference-application as well as I.T.R. No. 53180 of 2024, being outcome of same impugned order.

2. Through these reference-applications filed under section 133(1) of the Income Tax Ordinance, 2001 (the ‘*Ordinance*’) the applicant has requested to answer the following question arising out of order dated 24.06.2024 passed by the learned Appellate Tribunal Inland Revenue, Lahore (the “*Tribunal*”):-

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal has failed to pass a reasoned, just, fair proper, plausible and speaking order as required under section 24A of the General Clauses Act, 1897?”

3. Mr. Shahbaz Butt-learned counsel for the applicant has submitted that the learned *Tribunal* while dismissing the appeals has not addressed the questions of law and facts put-forth by the applicant. Learned counsel for the applicant

has relied upon section 24A of the General Clauses Act, 1897 (the ‘*Act*’) and stated that power to make any order conferring upon any authority, officer or person has to be exercised justly and for advancement of the purposes of the relevant enactment; that it is incumbent upon any officer or authority to give reasons for reaching to the conclusion.

4. Mr. Tabassam Ali-learned counsel for the respondent-department has vehemently opposed this reference-application and he has stated that the question reproduced above is not arising out of the order of the learned *Tribunal*.

5. Heard.

6. Record reflects that the applicant raised several questions, factual and legal, before the learned *Tribunal*, however, in paragraphs No. 1 to 6 of order dated 24.06.2024 merely the arguments of the two sides and the orders passed by the *fora* below have been reproduced and then the appeals have been rejected without giving any reasoning. The relevant and operative part reads as follows:-

“...However keeping in view the grounds of appeals and the facts and circumstances of these appeals we observed that the learned counsel for the taxpayer has failed to point out any legal or factual infirmity in the impugned appellate orders and has not put forth any documentary or material evidence to rebut the observations and findings of the learned CIR(A)...”

7. The proposition of law is well settled that judicial or *quasi-judicial* forums should record reasons for their conclusions and decide the matters through speaking judgments and / or

orders. This is to enable the aggrieved parties to set up their appeals, applications or petitions as well as enabling the higher Courts to exercise their jurisdiction properly and to appreciate the controversies in correct perspective. In case titled “Muhammad Iqbal Chaudhary and another vs. Secretary, Ministry of Industries and Production, Government of Pakistan and others” (PLD 2004 SC 413), the Supreme Court of Pakistan while setting aside the order assailed therein, remanded the case for decision afresh and observed as follows:-

“3. It may be noted that the forums seized with the judicial matters are required to pass such a speaking judgment that it should give an impression to readers that the legal and factual aspects of the case which were raised before it for the purpose of decision have been considered and decided in the light of recognized principles of law on the subject instead of disposing of in slipshod manner.”

Similar question was taken up by the Supreme Court of Pakistan in case titled “Muhammad Amin Muhammad Bashir Limited vs. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others” (2015 SCMR 630), wherein, a case arising out of a decision passed by the Federal Board of Revenue was found devoid of reasoning that also resulted into an order of remand and Supreme Court observed:-

“...The legislature, when it confers a wide ranging power, must be deemed to have assumed that the power will be, firstly, exercised in good faith, secondly, for the

advancement of the objects of the legislation, and, thirdly in a reasonable manner. Section 24A of the General Clauses Act, 1897, reiterates the principle that statutory power is to be exercised "reasonably, fairly, justly and for the advancement of the purposes of the enactment" and further clarifies that an executive authority must give reasons for its decision. Any action by an executive authority which is violative of these principles is liable to be struck down. No other view is permissible.

10. In the well known case of "Amanulla Khan and others v. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others (PLD 1990 SC 1092) this Court laid down the principle of sinictered discretion.

"Wherever wide-worded powers conferring discretion exist, there remains always the need to structure the discretion and it has been pointed out in the Administrative Law Tax by Kenneth Culp Davis (page 94) that the structuring of discretion only means regularizing it, organizing it, producing order in it so that decision will achieve the high quality of justice. The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure.

Somehow, in our context, the wide worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalize it and regulate it and regulate it by Rules, or Policy statements or precedents, the Courts have to intervene more often, than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times..."

(Underlining is added)

Further reference, if so required, can be made to cases titled “Khalid Humayun vs. The NAB through D.G. Quetta and others” (PLD 2017 SC 194) and “Commissioner of Inland Revenue (Legal), Peshawar vs. Khalid Umar Khan” (2016 PTD 832).

8. Now coming to the argument of Mr. Tabassam Ali that the reference application is only maintainable against the question of law or mixed question of law and facts that arises out of order passed by the learned *Tribunal*. He stated that the question sought to be answered is not arising out of the order under challenge. It is already settled that the questions required to be answered in reference-applications include questions argued before the learned *Tribunal* on which the finding has been given as well as the questions argued but no finding has been given on such question(s). In case titled “Messrs F.M.Y. Industries Ltd vs. Deputy Commissioner Income Tax and another” (2014 SCMR 907) the Supreme Court of Pakistan has addressed similar argument, as raised before us by the learned counsel for the respondents, in the following terms:-

“10. A perusal of the above extract reveals that the learned High Court only has to give opinion on questions of law raised before, it and not on the grounds mentioned in the appeal. It is now a settled law that only those questions can be raised before the learned High Court which are questions of law and are arising from the order of the *Tribunal*. **Questions of law have been held to include questions argued before the *Tribunal* on which finding has been given by the *Tribunal* or questions argued before the *Tribunal* but no finding has been given**

by the Tribunal on such questions and questions which were never argued but had been adjudicated by the Tribunal... ”

(Emphasis is supplied)

9. It appears that while concluding the appeals the above settled law has escaped the view of the learned *Tribunal*. We have already reproduced the operative part of the order challenged before us, which reflects that no question of law or facts before the learned *Tribunal* is addressed. The order is clearly devoid of proper reasoning. Therefore, the order dated 24.06.2024 is *set-aside* with the observation to pass a speaking order, as per law already discussed above. The case shall be deemed to be pending before the learned *Tribunal* on 14.10.2024 when the applicant shall ensure to appear. The learned *Tribunal* shall decide the appeals afresh within two months from the date fixed above.

10. The question of law, reproduced above, is answered accordingly and in favour of the applicant. Office to send a copy of this order to the learned *Tribunal* as required under section 133(8) of the *Ordinance*.

(ABID AZIZ SHEIKH)
JUDGE

(SULTAN TANVIR AHMAD)
JUDGE

Approved for reporting.

Judge

Judge