

Form HCJD/C-121

**ORDER SHEET****IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN  
(JUDICIAL DEPARTMENT)****ITR No.23 of 2024**

**The Commissioner Inland Revenue, Zone-III, Large Taxpayers Office,  
Multan  
Versus  
M/s Pak Arab Fertilizers Ltd.**

S.No.of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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02.12.2025 Mr. Muhammad Suleman Bhatti, Advocate for applicant.  
Mr. Asad Zaman Tarar, Advocate for respondent.

Following questions of law are placed before us for determination, statedly arisen out of order of the Appellate Tribunal Inland Revenue, Multan Bench, Multan ("Tribunal") dated 12.12.2023.

"i) *Whether in the facts & circumstances of the case, the learned Appellate Tribunal was justified to hold that the taxpayer is entitled to claim the initial allowance under section 23(5) of the Income Tax Ordinance, 2001, on the aircraft which is not related to business activity?*

ii) *Whether in the facts & circumstances of the case, the learned ATIR was justified to disallow the addition of deduction claimed u/s 60B of the Income Tax Ordinance, 2001, contrary to the express provision of section 34(5) of the Income Tax Ordinance, 2001?*

2. Primary contentions by learned counsel for applicant department are that the Tribunal had misconstrued provisions of Sections 34(5), 60B and 23(5) of the Income Tax Ordinance, 2001 ("The Ordinance"). Adds that Tribunal erred in law

in holding that section 34(5) of the Ordinance is not attracted. Submits that how an aircraft or any part thereof be treated as eligible depreciable asset when it was not established that it was used for the business purposes only. Elaborates that no evidence was produced to bring aircraft within the ambit of an depreciable asset, required to be established for claiming depreciation, let alone meeting eligibility for the purposes of initial allowance.

3. Conversely, with reference to first question of law, learned counsel for respondent taxpayer submits that Aircraft and parts thereof were acquired and used for business and same qualify as an “eligible depreciable assets” in terms of section 23(5) of the Ordinance. Adds that findings recorded by the Tribunal that aircraft is employed for the purpose of business are conclusive and require no interference. On second question, it is argued that Workers Participation Fund (WPF) is a deductible allowance, which is adjustable against gross income and not against the head income from business. Explains that WPF is not an expenditure and not classifiable as liability in terms of section 34(5) of the Ordinance.

4. While rebutting the argument, learned counsel for applicant department submits that respondent taxpayer had provisioned WPF as expenditure in annual income tax returns submitted during relevant years and now respondent cannot renegade from its principled position.

**Opinion regarding first question:**

5. We examined the findings recorded by the Tribunal, which are found superficial and perfunctory, wherein no analysis was found with supporting evidence that aircraft has been used for business purposes – mere import details and production of goods declarations would not meet the requirements of sections 22 and 23 of the Ordinance. In absence of such determination no entitlement for initial allowance could be claimed. We asked learned counsel, who conceded that flight log of the aircraft was not provided to show details of flights, purpose thereof, identity of the passengers travelling and purpose of travel. For the purposes of seeking initial allowance, it is essential for the taxpayer to substantiate that aircraft is used for the purpose of business – even partly use for business and partly other use would

attract scrutiny in terms of sub-section (3) of section 22 of the Ordinance. In these circumstances, we conclude that determination was deficient and not carried on in accordance with the benchmark requirements prescribed under section 23 of the Ordinance. We remand the matter for re-determination of claim of initial allowance, afresh. **Question stood answered accordingly.**

**Opinion regarding second question:**

6. It is not disputed that Workers Participation Fund (WPF) was provisioned for the relevant tax year, which was claimed as expenditure. Liability was not paid, which is condition precedent for claiming deduction in terms of section 60B of the Ordinance. Conventionally, companies establish fund in the accounts, aligning it with accrual-based accounting system of expenditure and liabilities, irrespective of the fact that payment is made at later stage. This position is manifested from the return of income provided and factum thereof was not disputed by learned counsel for respondent. We dismiss assertion that it was a mistake and continued year after year. In terms of section 34(5) of the Ordinance, liability, to which

deduction relates, was not paid within three years of the end of the tax year in which deduction was allowed, and unpaid liability had to be paid before same is chargeable to tax under the income from business category in the first year following the end of three years. Learned counsel for the respondent states that part of the liability was paid subsequently but benefit of sub-section (6) of section 34 of the Ordinance was not extended and nor reconciled.

7. In view of the above, we set aside the determination by the Tribunal, regarding the second question, and hold that non-payment of liability of WPF and provisioning thereof attracts section 34(5) of the Ordinance. Judgment in the case of "COMMISSIONER INLAND REVENUE v. Messrs RIAZ BOTTLERS (PVT.) LTD. (Now Lottee Akhtar Beverages (Pvt.) Ltd." (2024 SCMR 684) was in the context of section 25(c) of erstwhile Income Tax Ordinance, 1979, which has no applicability. Question stood answered accordingly in favour of the department. We remand the matter to the Tribunal to the extent of determination that whether taxpayer is entitled to any benefit under sub-section (6) of section 34 of the Ordinance.

8. This reference application is allowed in aforesaid terms. Matter, to the extent of factual aspect of the issues under reference, is remanded, though questions of law, concerning interpretation of relevant provisions of the Ordinance, stood answered accordingly.

9. Office to send copy of this order under the seal of the Court to the Appellate Tribunal accordingly.

**(Abid Hussain Chattha) (Asim Hafeez)**  
Judge. Judge.

Approved for Reporting.

Judge. Judge.

*A.D. Mian\**