

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Tax Reference No. 06 of 2003

The Commissioner of Income Tax

Vs

M/s Fauji Foundation

DATE OF DECISION: 18.01.2021

APPLICANT BY: Mr. Saeed Ahmed Zaidi,
Advocate.

RESPONDENTS BY: M/s Syed Ali Zafar and Raja
Zafar Khaliq, Advocates.

BABAR SATTAR, J.- Through this consolidated judgment, we will decide the instant Tax Reference and the Tax References listed in Annexure 'A' attached hereto.

2. In these Tax References the question of law before us is as follows:

"Whether on the facts and in the circumstances of the case, learned ITAT was justified in law in holding that the assessee's interest income on the bank deposit is chargeable to tax as income from business or profession and not as income from other sources."

3. Learned counsel for the Department has relied on the judgment of the august Supreme Court in the matter of

"Lucky Cement Ltd. vs. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar" [2015 SCMR 1494] to contend that income/interest yielded from placement of funds in bank accounts would be taxed as assessed "income from other sources" and not as "income from business" for purposes of the Income Tax Ordinance, 1979.

4. Learned counsel the respondent company states that Lucky Cement's case does not support the Department's contention as that case turned on the fact that the constituent documents of the company did not empower the company to engage in the business of investment and it was in view of the explicit prohibition in the constituent documents of the taxpayer company that the august Supreme Court held that income/interest from investment could not be treated as income from business and ought to be tread as income from other sources. The learned counsel further submits that the respondent in the present references is a trust set up to undertake welfare activities and there is no provision within the constituent documents of the respondent company that prohibits it from investing its funds in the interest bearing bank account/securities and consequently the interest on bank deposits of the respondent company is chargeable to tax as "income from business" and not "income from other sources". The learned counsel also states that up until tax year 1998 the Department continued to treat interest income of bank deposits as income from the business and suddenly changed its view point for purposes of tax year 1999 to 2002

without any change in the law or the circumstances of the respondents. The learned counsel has drawn our attention to C.M No. 169/2017 in ITR No. 56/2017 along with which is appended a judgment of the learned Lahore High Court in relation to Income Tax Appeals No. 16, 17,18, 19 & 20 of 1999 filed by the respondent against the Department. The question of law in the said references decided by the learned Lahore High Court was the same as that before us in the present references, which remanded the matter back to the appellate tribunal to decide the following questions:

(a). Whether the income of the appellant from the interest on Bank deposits could be defined as "income from other sources" and was taxable?

(b). If the "income on interest from the Bank deposits" is not strictly definable as "income from the business", but the same being used for the welfare of the beneficiaries by a charitable Trust, whether would be taxable either under the head "income from other sources" or "income from the business or profession"

5. In compliance of the said order of the learned Lahore High Court, the appellate tribunal decided the matter vide order dated 30.06.2000 and held that income of the respondent from interest on bank deposits will be taxed as "income from business" and not as "income from other sources". This order of the appellate tribunal in relation to the parties before us, was not challenged by the Department and has attained finality.

6. We have heard the learned counsel for the parties.

7. The judgment of the august Supreme Court reported as "*Lucky Cement Ltd. vs. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar*" [2015 SCMR 1494] does not come to the Department's aid as the principle laid down therein is that in order to determine whether income/interest accrued from investment of the taxpayer is to be categorized as "income from business", the constituent documents of such taxpayer company would need to be scrutinized and the determination would rest on the business objects of the company as provided therein. In Lucky Cement's case the memorandum of articles of taxpayer company did not empower the company to indulge in the business of investment and infact contained a prohibition preventing the company from indulging in the business of investment. In view of this, the august Supreme Court held that the income/interest accrued from such investment could not be treated as a business income. The case is thus distinguishable.

8. The question of law raised before us has already been decided by the learned appellate tribunal in Income Tax Appeals No. 548 (IB) to 553(IB) of 1998-1999 vide order, dated 30.06.2020 passed pursuant to the judgment of the learned Lahore High Court in ITA No. 16/1999, dated 27.10.1999 and consequently the learned appellate tribunal ought to have followed its own precedent that was laid down

in the previous round of litigation between the parties present before us.

9. In view of the above, the question of law before us stands settled and there is no new question for us to adjudicate in the present references.

10. A copy of this order is directed to be sent to the Registrar of the learned Tribunal under the seal of this Court.

(CHIEF JUSTICE)

(BABAR SATTAR)
JUDGE

Saeed.

<u>ANNESURE-A</u>		
1.	I.T.R No. 53/2007	Commissioner of Income Tax Companies Zone, Islamabad Vs. M/s Fauji Foundation Ltd.
2.	I.T.R No. 54/2007	Commissioner of Income Tax Companies Zone, Islamabad Vs. M/s Fauji Foundation Ltd.
3.	I.T.R No. 55/2007	Commissioner of Income Tax Companies Zone, Islamabad Vs. M/s Fauji Foundation Ltd.
4.	I.T.R No. 56/2007	Commissioner of Income Tax Companies Zone, Islamabad Vs. M/s Fauji Foundation Ltd.