

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

T.R. No.88 of 2014

Commissioner Inland Revenue (Zone-1)

Vs

M/s Askari Sovereign Cash Fund

Petitioner's by: Hafiz Muhammad Iqbal, Advocate

Date of Decision: 14.05.2015.

* * * * *

Aamer Farooq, J.- This order shall decide the instant tax reference as well as T.R. Nos.89, 90, and 91 of 2014, as common question of law is involved.

2. The applications have been filed by the applicant under Section 133 of Income Tax Ordinance, 2001 (the **Ordinance**) for deciding question of law arising out of order dated 29.04.2014 passed by Appellate Tribunal, Inland Revenue, Islamabad whereby application for interim relief filed by the respondent was allowed.

3. The learned counsel for the applicant was confronted, at the outset, regarding maintainability of

the instant application as the order passed is not final decision but interim in nature.

4. The learned counsel, inter alia, contended that the word used in section 133 of the Ordinance is order and no where it is specified that the application can be made only with respect to the final order-decision, therefore, the references are maintainable.

5. The appeal to Appellate Tribunal can be filed by the Tax Payer or Commissioner against the order passed by Commissioner (Appeals) under section 131 of the Ordinance. Section 132 of the Ordinance provides for disposal of appeals by the Appellate Tribunal and is as under:

“132. Disposal of appeals by the Appellate Tribunal.-

(1) The Appellate Tribunal may, before disposing of an appeal, call for such particulars' as it may require in respect of the matters arising on the appeal or cause further enquiry to be made by the Commissioner.

(2) The Appellate Tribunal shall afford an opportunity of being heard to the parties to the appeal and, in face of default by any of the party on the date of hearing, the Tribunal may, if it deems fit, dismiss the appeal in default, or may proceed ex parte to decide the appeal on the basis of the available record.

(2) (A). The Appellate Tribunal shall decide the appeal within six months of its filing.

(3) Where the appeal relates to an assessment order, the Appellate Tribunal may, without prejudice to the powers specified in subsection 2, make an order to –

(a) affirm, modify or annul the assessment order; or

(b) set aside the assessment order and direct the Commissioner to make a new assessment order in accordance with the directions or recommendations of the Tribunal; or

(c) remand the case to the Commissioner or the Commissioner (Appeals) for making such inquiry or taking such action as the Tribunal may direct.

(4) The Appellate Tribunal shall not increase the amount of any assessment or penalty or decrease the amount of any refund unless the taxpayer has been given a reasonable opportunity of showing cause against such increase or decrease, as the case may be.

(5) Where, as the result of an appeal, any change is made in the assessment of an association of persons or a new assessment of an association of persons is ordered to be made, the Appellate Tribunal may authorise the Commissioner to amend accordingly any assessment order made on a member of the association and the time limit in sub-section (2) of section 122 shall not apply to the making of such amended assessment.

(6) Where the appeal relates to a decision other than in respect of an assessment, the Appellate Tribunal may make an order to affirm, vary or annul the decision, and issue such consequential directions as the case may require.

(7) The Appellate Tribunal shall communicate its order to the taxpayer and the Commissioner.

10) Save as provided in section 133 the decision of the Appellate Tribunal on an appeal shall be final."

6. Under section 133 of the Ordinance an application can be preferred by an aggrieved person or the Commissioner alongwith statement of the case stating any question of law arising out of such order. Though in section 133 of the Ordinance it is not provided that the application can only be preferred against the final order-decision of the Tribunal, however, the intention of legislature in this behalf can be discerned from subsections 6 & 7 of section 132. The plain reading of the referred subsections show that the Appellate Tribunal while deciding the appeal may make an order to affirm, vary or annul the decision impugned before it and such order of Tribunal is to be communicated to the Tax Payer and the Commissioner as well. In section 133 *ibid* the words that have been used are "such order" of the Tribunal which implies that the order of the Appellate Tribunal passed under subsection 6 of section 132 is being referred to and that is the final order, which involves any question of law.

7. The references; mentioned above, have been filed with respect to the interim order confirming the stay granted to the respondents and does not decide the

appeal, therefore, the applications-references have not been filed against the final order-decision of the Tribunal.

8. For the foregoing reasons, the instant Tax Reference as well as Tax References No.89, 90 & 91 of 2014 are dismissed.

9. A copy of the decision shall be sent under the seal of this Court to the Income Tax Appellate Tribunal as provided under section 133 (5) of Income Tax Ordinance, 2001.

(ATHAR MINALLAH)
JUDGE

(AAMER FAROOQ)
JUDGE

"Altar Malik"

Approved for reporting