ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Tax Reference No.56 of 2009
Commissioner Income Tax
Versus
M/s Tandoori Restaurant and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	31.03.2022	Mr. Saeed Ahmad Zaidi, Advocate for the applicant, Mr. Nadeem Ahmad, Advocate for respondent No.1.

The question of law proposed for our consideration is as follows:-

"Whether on the facts and circumstances of the case, the sales declared by the Tax Payer in the Sales Tax Return and not audited by the Sales Tax Department are binding on the Income Tax Department for acceptance without independent evaluation and application of mind?"

2. Respondent No.1, M/s Tandoori Restaurant, is an association of persons. It filed its income tax returns for the assessment year 2002-2003 declaring a net loss of Rs.1,76,386/-. The assessment was finalized under Section 62 of the Income Tax Ordinance, 1979 ("the 1979 Ordinance") and the income was assessed as Rs.6,54,985/-. This included an addition of Rs.3,96,000/- made under Section 24(ff) of the 1979 Ordinance. Aggrieved by the said assessment, respondent No.1 preferred an appeal before the Commissioner Income Tax ("C.I.T."). Vide order dated 30.09.2005, the C.I.T. directed that the declared sales for the assessment year 2002-2003 be accepted. He upheld the addition made under Section 24(ff) of the 1979 Ordinance as justified. The Department preferred a second appeal to the Income Tax Appellate Tribunal ("I.T.A.T."). Vide order dated 05.08.2006, the I.T.A.T. upheld the decision of the C.I.T. The instant tax reference is

arising from the concurrent orders passed by the C.I.T. and the I.T.A.T.

3.   Since the sales declared by respondent No.1 in its sales tax returns for the purposes of sales tax had been accepted by the Department, we hold that the C.I.T. and the I.T.A.T. were correct in holding that a different view in the assessment order could not be taken by the Income Tax Department. Therefore, the instant reference is answered in the <u>negative</u>.

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(ARBAB MUHAMMAD TAHIR)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

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