

Form No: HCJD/C-121

ORDER SHEET**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**
JUDICIAL DEPARTMENT**I.T.R No. 132/2011**

M/s Habibullah Coastal Power Company Pvt. Ltd.

Vs

Commissioner of Income Tax (Legal), LTU, Islamabad.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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29-09-2020. Hafiz Muhammad Idrees and Muhammad Mohsin Nazir, Advocates for the applicant.
Hafiz Munawar Iqbal, Advocate for respondent.

Learned counsel for the applicant submitted that the questions raised in the instant I.T.R. (relating to the tax year 2006), stands settled by the learned Division Bench of this Court, vide order dated 17.12.2019, passed in ITR No. 74/2009 and connected matters. While passing the above said judgment, question No.2 has been decided in the applicant's favour, whereas, remaining questions have been decided against the applicant. The relevant paragraphs are reproduced below:

6. Subsequently the above findings of this Hon'ble Court on the issue of set-off of losses was also upheld by the Hon'ble Supreme Court of Pakistan in case of **UCH Power (Pvt) Ltd vs. Income Tax Appellate Tribunal** reported as **(2010) 102 Tax 69 (S.C. Pak)**. The Hon'ble Supreme Court after discussing the relevant provisions of the law at length held that:

"15. A careful reading of the above reproduced sections from the Ordinance and placing it in juxtaposition with clause 176 of the Ordinance leaves no room for doubt in our mind to hold that the set-off of losses from business or profession, if any, incurred by respondent companies, which

are covered by above provisions of the statute were not restricted to any particular head of income, but the same were adjustable against their income under any other head, therefore, the impugned judgment of the Islamabad High Court, affirming this position, and thereby maintaining the findings of the Income Tax Appellate Tribunal in the same terms, is unexceptionable."

7. The Hon'ble Supreme Court, vide its above stated judgment passed in the case, since, has resolved the controversy of setting-off of business losses against the taxable income, therefore, respectfully following the principle settled by the Hon'ble Apex Court, the question proposed by the Applicant/Department through T.R. Nos. 13 & 74/2009, is answered in positive against the revenue.

*8. Now we take up the question proposed in income tax reference bearing TR No. 72/2009 filed on behalf of the Applicant/taxpayer wherein the Learned Counsel for the Applicant/taxpayer has assailed the order of the Appellate Tribunal dated 17.02.2009, and sought opinion regarding application of clause 132 of the 2nd Schedule of the Income Tax Ordinance, 2001, in respect of the interest received by the Applicant from WAPDA on delayed payments being attributable to the business activities of its electric power generation project. Learned Counsel, during argument submitted that the question proposed vide TR No. 72/2009, has already been answered in favour of the Applicant/taxpayer by this Hon'ble Court, vide Case No. **T.R No. 03 of 2009 dated 27.07.2009 (FaujiKabirwala Power Company Ltd vs. Commissioner of Income Tax (Legal), IBD)**, copy of which was also supplied to the Learned Counsel for Respondent/ Department, who during the course of hearing also perused the said unreported judgment of this Court. The Learned Counsel argued that the amount received from WAPDA as interest for delayed payment is not taxable u/s 30 i.e. income from other sources, as the amount received is in the nature of penalty or surcharge because WAPDA has failed to make payments for supply of electricity within due time, therefore, interest on delayed payment was charged under the provision of contract*

between the parties, as such it is a part of business income from power generation.

*9. We have heard learned Counsel for the parties and have also gone through the impugned appellate orders of both the foras below as well as the case law referred by the Learned Counsel. Perusal of the judgment bearing **T.R No. 03 of 2009 dated 27.07.2009**, relied upon by the Learned Counsel for Applicant/taxpayer, shows that this Hon'ble Court has answered the question in favour of the taxpayer and held as under:*

"6. There is a provision in the contract between the Petitioner Company and WAPDA that if WAPDA does not pay the amount of electricity, interest will be charged on the amounts so delayed. In our view, this income is "profits and gains derived from an electric power generation project" within the meaning of clause 176 of the second schedule Part I and is exempt from payment of income tax. We, therefore, answer question No. (vi) in the positive."

2. Learned counsel for the applicant seeks the disposal of instant Income Tax Reference, in terms of the law laid down in the above said judgment.

3. Learned counsel for the contesting respondents does not have any cavil with the said proposition.

4. In view of the above, instant Income Tax Reference is disposed of, in terms of the law laid down by the Hon'ble Division Bench of this Court in the above said judgment.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(LUBNA SALEEM PERVEZ)
JUDGE