

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

S.T.R. No.05/2012

Commissioner Inland Revenue (Zone-I)

Versus

M/s Mega Mart Pvt Ltd

Applicant by : Mr Abdul Hameed Kundi, Advocate.

Date of Hearing : **19-05-2022**

ATHAR MINALLAH, C.J.- The Department has filed the reference in hand and has proposed for our consideration questions of law stated to have arisen out of judgment, dated 31.01.2011, passed by the learned Appellate Tribunal Inland Revenue. The proposed questions of law are as follows:-

- (a) *Whether the Tribunal can waive off a penalty which was imposed for not fulfilling the provisions of Section 25 of Sales Tax Act 1990 on the grounds that the taxpayer has fulfilled the provisions of section 3, and 7 of the same act"*
- (b) *Whether fulfillment of provisions of section 3, 6 and 7 absolves the taxpayer from fulfillment of the provisions of section 25 of Sales Tax Act 1990"*

2. The respondent taxpayer was served with notice, dated 22.03.2010. It was alleged that the latter had suppressed its sales amounting to Rs.23.839 million. The officer Inland Revenue did not accept the explanation of the taxpayer and adjudged the tax due vide Order-in-Original No.06/2010, dated 31.05.2010. The taxpayer preferred an appeal.

3. The learned Commissioner Inland Revenue (Appeals) directed the Department to examine the record of the taxpayer and thereafter submit a report. The reconciliation statement, dated 26.10.2010 was submitted by the Department wherein it was affirmed that no loss of revenue was caused by the taxpayer and that the tax due had been duly deposited. However, default surcharge was directed to be recovered from the taxpayer under section 34 of the Sales Tax Act, 1990 (hereinafter referred to as the "**Act of 1990**"). The learned Tribunal allowed the appeal which had been preferred by the taxpayer on the ground that since there was no loss of revenue, therefore, imposition of penalty under section 33 of the Act of 1990 was not justified.

4. The learned counsel for the Department has been heard. It is an admitted position that the reconciliation statement dated, 26.10.2010, submitted by the Department before the learned Commissioner Inland Revenue (Appeals) has not been contested and admittedly there was no loss to the exchequer. The show cause notice

was issued by the Department on the basis of unfounded assumptions. Section 25 of the Act of 1990 entitles the taxation officers to have access to record/ documents maintained by a taxpayer. In the case in hand, the reconciliation by the Department was made on the basis of the documents maintained by the taxpayer. The question of refusal to give access, therefore, does not arise nor section 25 of the Act of 1990 is attracted in the facts and circumstances of the case. The proposed questions are, therefore, misconceived. The order passed by the learned Tribunal is well reasoned and we have not been able to persuade ourselves that the proposed questions have arisen therefrom. The above questions of law proposed for our consideration are misconceived and thus the reference is disposed of in the light of the forgoing discussion.

5. 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

*Asif Mughal/**