

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Tax Reference No. 02 of 2007

Commissioner of Income Tax

VS

M/s ACP Oil Mills (Pvt.) Ltd.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	11.05.2020.	Nemo.

Through instant reference application the applicant department has proposed the following question of law said to arise out of the impugned order dated 16.11.2006, passed by the Income Tax Appellate Tribunal in ITA No.115/IB/2006, relating to tax year 2004:-

“Whether on the facts and in the circumstances of the case the learned ITAT was justified to delete charge of WWF observing that tax charged under section 80 DD falls in the ambit of presumptive Tax Regime notwithstanding the fact that the taxpayer had filed return of income u/s 114 of the Income Tax ordinance, 2001 and its total income was arrived at after computation providing for allowances and benefits of determined losses claimed by it?”.

2. None appeared for the parties, however, perusal of the record reveals that identical question was raised for determination before this Court for the previous assessment year through TR Nos.103 & 104/2006, whereby, the Hon’ble Division Bench, vide their judgment dated 01.06.2016, answered the question in affirmative. The relevant para is reproduced as under:-

“The provisions have also been considered and interpreted by the High Courts of Sindh and

Lahore in the cases “Commissioner of Income Tax v. Kamran Model Factory” 86 TAX 39 (H.C. Kar.), “C.I.T/W.T., Companies Zone, Faisalabad v. K.A. Enterprises (Pvt.) Ltd., Faisalabad” [(2005) 91 TAX 391 (H.C. Lah.)], “commissioner of Income-Tax/Wealth Tax, Sialkot v. Thapur (Pvt.) Ltd.” [(2002) 86 TAX 274 (H.C. Lah.)], “Madina Enterprises Ltd, Faisalabad v. Federation of Pakistan, Islamabad and others.” [(2005) 92 TAX 82 (H.C. Kar.)] “Rima cooking Oil Industries (Pvt.) Ltd. v. Federation of Pakistan and others” [(2004) 89 Tax 48 (H.C. Kar.)]. Both the Courts have also held that Workers Welfare Fund is not chargeable when the assessment is covered under the presumptive tax regime contemplated under the Ordinance of 1979. We, therefore, concur with the principles and law enunciated and laid down by the three High Courts which is to the effect that where assessee is covered under the presumptive tax then the levy contemplated under section 4 of the Ordinance of 1971 would necessarily falter away.”.

3. In view of the above, the question proposed is answered in affirmative. Copy of this order shall be sent to the learned Tribunal under the seal of this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

(LUBNA SALEEM PERVEZ)
JUDGE