

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

I.T.R. No.244/2011

Commissioner Inland Revenue (Zone-II), LTU, Islamabad

Versus

M/S Motorola Limited

Applicant by : Ms Naziran Malik, Advocate.

Date of Hearing : 27-01-2020.

ATHAR MINALLAH, C.J.- Through this application filed under section 133 of the Income Tax Ordinance, 2001 (*hereinafter referred to as the 'Ordinance of 2001'*) the Department has proposed question of law stated to have arisen out of judgment, dated 06-05-2011, passed by the learned Appellate Tribunal Inland Revenue (*hereinafter referred to as the 'Tribunal'*).

2. The facts, in brief, are that the respondent is a non-resident company having permanent establishment in Pakistan. The Taxation Officer, pursuant to examining the annual statement filed by the respondent, issued show cause notice, dated 30-10-2008. Subsequently order, dated 16-12-2008, was passed by the learned

Taxation Officer. The said order was assailed by the respondent company before the learned Commissioner Inland Revenue (Appeals-I) (*hereinafter referred to as the '**Commissioner (Appeals)**'*). The appeal was allowed and consequently the demand raised by the Taxation Officer was deleted. The Department preferred a second appeal which was dismissed by the learned Tribunal vide order, dated 06-05-2011.

3. The learned counsel for the Department has been heard. With her able assistance, the impugned orders passed by the Taxation Officer and the appellate forums have been carefully perused. It is evident from the order passed by the Taxation Officer that the latter had initiated proceedings on the basis of examination of the "annual statement" submitted by the respondent company. The appellate forums have held that the Taxation Officer had misread the "annual statement". The learned counsel for the applicant Department, despite her able assistance, could not show that the learned Commissioner (Appeals) had entertained fresh evidence. The case was initiated on the basis of the "annual statement" which was submitted by the respondent company. The said statement was examined by the two appellate forums and both concurrently held that the learned Taxation Officer had misread the document. The question of law proposed for our consideration is, therefore, misconceived because it was not a case of entertaining fresh evidence at the appellate stage rather it pertained to interpretation of the document, which had been relied

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upon by the Taxation Officer. It is thus obvious that no question has arisen out of judgment, dated 06-05-2011, passed by the learned Tribunal.

4. In light of the aforementioned reasons, the instant Reference is without merit and accordingly dismissed.

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)

(LUBNA SALEEM PERVEZ)
JUDGE

Luqman Khan/*