

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**I.T.R No. 23 of 2009**

**M/s Askari General Insurance Company Limited, Rawalpindi**  
**VS**  
**Commissioner of Income Tax (Legal), Large Taxpayer Unit, etc.**

**I.T.R No. 41 of 2009**

**M/s Askari General Insurance Company Limited, Rawalpindi**  
**VS**  
**Commissioner of Income Tax (Legal), Large Taxpayer Unit, etc.**

**I.T.R No. 51 of 2009**

**M/s Askari General Insurance Company Limited, Rawalpindi**  
**VS**  
**Commissioner of Income Tax (Legal), Large Taxpayer Unit, etc.**

**Applicant : M/s Muhammad Mohsin Nazir & Hafiz Muhammad Idrees, Advocates.**

**Respondents : Sheikh Anwar-ul-Haq, Advocate.**

**Date of hearing : 14.05.2020.**

**LUBNA SALEEM PERVEZ J.** Through this common judgment we intend to dispose of the titled applications filed by the applicant company u/s 133(1) of the Income Tax Ordinance, 2001, whereby, the following questions of law have been proposed which have been admitted by this Court, vide order dated 11.11.2015, as arising out of the common order dated 21.11.2002, impugned herein, passed by the Income Tax Appellate Tribunal (*hereinafter referred to as the ITAT*) in ITA Nos. 424/IB/2001, 425/IB/2001-2002, 426/IB/2001-2002 and 1186/IB/2001-2002, relating to Assessment Years 1996-1997, 1997-98, 1998-1999 and 1999-2000, respectively:-

- i. *Whether under the facts and circumstances of the case the Appellate Tribunal was justified in holding the reference application infructuous when the order of appeal was not fully recalled by the appellate Tribunal while disposing of the M.A?*
- ii. *Whether on the facts and circumstances of the case and with specific reference to the provisions of Rule 5 of the Forth Schedule of the Income Tax Ordinance, 1979 the Appellate Tribunal was justified in holding that the assessing officer is empowered to restrict the deduction on account of expenses of management to the extent of limits prescribed in the Insurance Act, 1938?*
- iii. *Whether on facts and circumstances of the case the Appellate Tribunal was justified in holding the provisions of Rule 5 of the Fourth Scheduled to the Income Tax ordinance, 1979 were different in substance from the provision of Rule 6 of the first Schedule to the Income Tax Act, 1922?*
- iv. *Whether on facts and circumstances of the case the Appellate Tribunal was justified in not accepting the well-established principle of interpretation that where a fiscal statute is capable of more than one interpretation, the interpretation favorable to the applicant is to be adopted?*
- v. *Whether on facts and circumstances of the case the Appellate Tribunal was justified in not appreciating the fact that the inclusion of clause (c) in Rule 5 through the Finance, Act, 1999 was itself an admission on part of the legislature of the legal position that prior to this amendment, expenses of management incurred in excess of limits prescribed in the Insurance Act, 1938 could not be disallowed?*
- vi. *Whether on facts and circumstances of the case the Appellate Tribunal was justified in not appreciating the fact that the inclusion of clause (c) in rule 5 through the finance Act, 1999 was a substantive amendment in law that could not be retrospectively applied?*
- vii. *Whether on facts and circumstances of the case the and with specific reference to paragraphs 7 & 11 of the judgment, the Appellate Tribunal was justified in holding that the principle enunciated by the Honourable Supreme Court of Pakistan in case law reported as 1981 PLD 293 was distinguishable as it belonged to the era of the Income Tax Act, 1922 and had limited application as to facts of the case where this principle has been followed by the Appellate Tribunal in another judgment reported as 1998 PTD 1103 relating in relation to the provisions of the Income Tax Ordinance, 1979?*

2. The common facts involved in all the tax references under consideration regarding different assessment years are that the applicant is a public limited company engaged in the business of general insurance. The Deputy Commissioner in all the assessment years while finalizing assessment under section 62 of the Income Tax Ordinance, 1979, disallowed management expenses holding it to be in excess of the legal limit provided under section 40C(2) of the Insurance Act, 1938, read with Insurance Rules, 1958. The applicant company challenged the assessment orders before Commissioner of Income Tax (Appeals) Islamabad, who vide consolidated Order No. 1257 & 575 of 2000 (Assessment

year 1997-98 & 1998-99), dated 16.09.2000 and Order No. 3486/2001 (Assessment Year 1999-2000) dated 18.04.2001 allowed the grounds relating to expenses of management by placing reliance on the judgment of Hon'ble Supreme Court of Pakistan re: *Commissioner of Income-Tax, Central, Karachi v/s M/s Alpha Insurance Co. Ltd. (PLD 1981 SC 293)*. Commissioner's findings were based on the following reasons:

1. *The term "expenses of management" has to be restricted to expenses related to management. The specific inclusion of commission of remuneration for procuring business clearly defines parameters of the term cannot be granted unlimited inclusions. Had commission or remuneration for procuring business not been specifically included in the explanation of the term expenses of management, these would otherwise not be classified as expenses of management, being selling expenses.*
2. *The term remuneration has been deemed to include travelling and entertainment allowances, etc.*
3. *A tax assessing officer's powers are limited to the extent given in Rule 5 of the Income Tax Rules, 1982, while dealing with insurance business. This rule lays to rest doubts, if any, in minds relating to an assessing officer's powers in assessing taxable income of an assessee carrying on general insurance business. The specific mention of adjustments in sub-rules (a) and (b) clearly means that an assessing officer cannot go beyond these expressed disallowances.*

3. Upon appeal before the ITAT, Islamabad, preferred by the respondent department, the order passed by the CIT(A) on 16.09.2000 was vacated, vide impugned Order dated 21.11.2002. The applicant company therefore, filed reference applications u/s 133(1) of the Ordinance, 2001 before the learned ITAT which were registered vide R. A. No. 148/IB/03, R.A. No. 149/IB/03 and R.A. No. 150/IB/03, to refer the questions proposed therein (*reproduced in para 1 above*) to the Hon'ble High Court. However, while the reference applications were pending before the ITAT, the applicant company filed miscellaneous application u/s 156 of the Ordinance, 2001, for rectification of order dated 21.11.2002, on the grounds that "*two out of three reasons given by the Commissioner have missed the attention of the Tribunal and need to be adjudicated upon*". The ITAT admitted the applications vide M.A. (R) No.94/IB/2003, M.A. (R) No.95/IB/2003 & M.A. (R) No.96/IB/2003, dated 30.10.2003, for the following reasons:-

*"5. With regard to the specified reasons in the order of the commissioner that remained un-adjudicated upon, we find it fair to recall our order to the extent of considering the matter of disallowing of management expenses and to give a findings on the remaining two points namely, whether:-*

1. *The term remuneration has been deemed to include traveling and entertainment allowance, etc.*
2. *A tax assessing officer's powers are limited to the extent given in Rule 5 of the Income Tax Ruled, 1982, while dealing with insurance business. This Rule lays to rest doubts, if any, in minds relating to an assessing officer's powers in assessing taxable income of an assessee carrying on general insurance business. The specific mention of adjustments in sub-rule (a) and (b) clearly means that an assessing officer cannot go beyond these expressed disallowances."*

Still not satisfied with the Order dated 30.10.202, the applicant company filed another application for further rectification of Tribunal's Order dated 30.10.2003, while submitting as follows:-

*"The request for reconsideration of the findings was (and is) based on the fact that related legal issues already stand decided by the Honourable Supreme Court and High Courts in a number of reported judgments. Full text of some these judgments were provided to the learned Members during hearing of the Rectification Applications. However, none of these case laws has either been discussed in the body of the consolidate Appellate Order or in the consolidated Rectification Order."*

The learned ITAT, vide Order dated 27.09.2008, in M.A. (R) No.25/IB/04, M.A. (R) No.26/IB/04 & M.A. (R) No.27/IB/04, dismissed the second rectification application, holding as under:-

*"We have heard both representatives of the parties to the dispute and also perused the relevant record. It is observed that while passing the impugned order, Tribunal had duly considered the judgments referred to by the learned counsel of the appellant. Out of those the relevant judgment cited as 1989 PTD 1090 was duly quoted by the Tribunal. The Tribunal had decided the issue consciously in accordance with the relevant provisions of law. On two issued [as mentioned at para 5 of the impugned order] the order was recalled, whereas, regarding the petitioner's name on the title page of the said order was corrected. We further observe that the fresh mistake pointed out through the present miscellaneous applications is not apparent from the Tribunal's impugned order. The case law cited by the petitioner's counsel at the time of hearing was duly considered by the Tribunal. Thus, no further interference is called for. As a result all the 4 miscellaneous applications are dismissed being devoid of merit."*

Learned ITAT besides deciding the above miscellaneous applications for rectification, vide a separate Order dated 27.09.2008, also disposed of reference applications bearing R.A.Nos. 148 to 150/IB/03, filed by the applicant for referring proposed questions (*reproduced at para No. 1 above*) to the Hon'ble High Court for its opinion, and observed as under:-

*"3. The learned counsel for the taxpayer has prayed that all the above questions of law be referred to the honourable High Court. The*

*learned DR on the other hand has objected to the reference applications because these had been rendered infructuous after the Tribunal having recalled the impugned order dated 21.11.2002, through a subsequent judgment dated 30.10.2003.*

4. *After hearing the parties and going through relevant record it is observed that the learned DR's contention is correct. The order dated 21.11.2002 against which reference applications have been filed, had been recalled by the Tribunal vide order dated 30.10.2003. Thus, the reference applications have been rendered infructuous, therefore, we declined to refer the proposed questions of law to the High Court in terms of Section 36 of the repealed Income Tax Ordinance, 1979 read with Section 133 of the Income Tax Ordinance, 2001.*

5. *Resultantly all the four reference applications fail. "*

6. Perusal of the first order passed in miscellaneous application for rectification dated 30.10.2003, reveals that the ITAT has sustained its order in respect of reason (1) of CIT(A), vide his order dated 16.09.2000, for allowing management expenses claimed by the applicant company and recalled its order for decision with regard to reasons (2) &(3) of the order of CIT (A).

7. Detail analysis of the above referred series of orders revealed that R.A.Nos. 148 to 150/IB/03, were filed proposing questions arising out of the decision of the ITAT dated 21.11.2002, in ITA Nos. 425/IB/2001-2002, 426/IB/2001-2002 & 1186/IB/2001-2002. However, the applicant filed two miscellaneous applications for rectification of this decision during the pendency of reference applications. The first miscellaneous application for rectification was partially allowed, vide order dated 30.10.2003, whereby, the learned ITAT recalled its order for giving finding regarding jurisdiction of assessing officer for disallowing management expenses, whereas, second application was dismissed. After recalling its own order, there remained no order in the field to the extent of issue of management expenses against which the applicant has proposed questions of law for opinion of the Court. The ITAT, vide its order in R.A.Nos. 148 to 150/IB/03, dated 27.09.2008, has rightly held that the reference applications have become infructuous as the main order dated 21.11.2002, against which the reference applications have been filed have been recalled.

8. In view of the facts and circumstances narrated above, it is held that since, the appeal of the applicant on the issue of allowing management expenses in terms of rule 5 of the Income Tax Rules, 1982, is still pending after the recall of its order dated 21.11.2002, thus, the reference applications filed u/s 133 (4) of

the Income Tax Ordinance, 2001 (prevailing at the relevant period) are misconceived hence, answers to the above questions are **declined**.

9. 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**

**Announced in Open Court this 16<sup>th</sup> day of July, 2020.**

**JUDGE**

**JUDGE**

**M. Javed Usman**