Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

INCOME TAX REFERENCE NO. 67 OF 2014

Mst. Shahida Parveen

Vs

The Additional Commissioner Inland Revenue, etc.

APPLICANT BY:	Mr. Khurram Shahzad Butt, Advocate.
RESPONDENTS BY:	Mr. Riaz Hussain Azam Bopera, Advocate.
DATE OF HEARING:	22.02.2022.

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BABAR SATTAR, J.- This is a reference filed under section 133 of the Income Tax Ordinance 2001 **("Ordinance")** and the questions of law stated to have arisen out of order, dated 23.05.2014 passed by the learned Appellate Tribunal Inland Revenue **("Tribunal")** are as follows:

i) *Whether on the facts and circumstances of the case, the Learned Appellate Tribunal without recording any plausible reason or subscribing any cogent justification of its own, has erred in law in confirming the action of the authorities below declining acceptance of the revised return?*

ii) *Whether on the facts and in the circumstances, the Learned Appellate Tribunal was under legal obligation to subscribe its own reasoning for confirmation of the order of the authorities below refusing acceptance of the revised return?*

iii) *Whether on the facts and in the circumstances of the case, a total non-speaking order is sustainable in the eye of law?*

iv) *Whether on the facts and in the circumstances of the case, the Learned Appellate Tribunal can*

lawfully decline retrospective effect of a beneficial amendment contained in Clause 14 of Part-III of the 2nd Schedule to the Income Tax Ordinance, 2001?

2. The only contention of the learned counsel for the applicant was that the impugned order passed by the learned Tribunal did not provide independent reasoning for upholding the order passed by the learned Commissioner (Appeals) dated 20.03.2014, which had upheld the Order-in-Original passed by the learned Additional Commissioner Inland Revenue under section 122(5A) of the Ordinance dated 23.01.2014.

3. Learned counsel for the respondents submitted that the impugned order suffers from no illegality. And that the learned Tribunal was under no obligation to reappraise reasons for agreeing with the order passed by the learned Commissioner (Appeals) in the event that it agreed with such order as well as reasoning in such order.

4. In the Order-in-Original dated 23.01.2014, the learned Additional Commissioner had found that the applicant had failed to discharge his obligation of paying minimum tax under section 113 of the Ordinance and had imposed a default surcharge under section 205 of the Ordinance. The learned Commissioner also observed that the taxpayer had furnished no evidence to suggest that it had wrongly stated its turnover as Rs.91 million instead of the correct turnover which purportedly was Rs.9.1 million. In the absence of such evidence or production of any books of accounts, the learned Commissioner concluded that there was no

basis to allow revision of the turnover as reported in the initial returns.

5. The applicant had been issued a show cause notice dated 04.06.2013 for its failure to discharge its minimum tax liability under section 113 of the Ordinance. After issuance of such show cause notice, the applicant had sought to revise its tax return, permission for which had been denied by the learned Commissioner on the basis that once a show cause notice had been issued the taxpayer could not be allowed to revise its return. The Commissioner (Appeals) while upholding the Order-in-Original held that the taxpayer was liable to pay minimum tax under section 113(2)(b) of the Ordinance and that the taxpayer had failed to discharge such obligation. He further upheld the decision of the Commissioner to refuse a revision of the tax return after issuance of the show cause notice.

6. The learned Tribunal in its order dated 23.05.2014 after summarizing the relevant facts stated that it agreed with the decision of the assessing officer to reject the applicant's plea seeking revision of a tax return. And that it agreed with the observation of the learned Commissioner that the applicant was liable to pay a minimum tax return under section 113 of the Ordinance. The applicant had raised an additional ground before the learned Tribunal that the applicant was entitled to the benefit of SRO No. 57(1)2012 dated 24.01.2012. The learned Tribunal however held that the said amendment was introduced in the year 2012 and was not applicable for purposes of tax year 2011, which was the year in the question before the learned Tribunal.

7. The learned counsel for the applicant has not even contended that Order-in-Original and the order of the learned Tribunal suffer from misapplication of any provision of the Ordinance. The sole contention before this Court is that the form of the impugned order suffers from illegality as it contains no independent reasons on the basis of which the learned Tribunal upheld the decision of the Commissioner (Appeals). Learned counsel for the applicant relied on ***Messrs Airport Support Services Vs. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others*** **(1998 SCMR 2268)**, wherein the august Supreme Court had held that in view of Section 24-A of the General Clauses Act, 1897, every statutory authority was under an obligation to give reasons for exercise of such authority. He further relied on ***Col. (Retd.) Ayub Ali Rana Vs Dr. Carlite S. Pune and another*** **(PLD 2002 SC 630)** for the proposition that where law confers on any Court discretion to make an order, the same must be exercised through application of judicial mind based on relevant considerations. He also relied on a decision of the learned Lahore High Court in ***M/s Sandal College Vs The Commissioner Inland Revenue & others*** **(I.T.R No. 122593 of 2017),** wherein it was held that as the learned Tribunal had simply agreed with the findings of the learned Commissioner (Appeals), the decision was not proper exercise of jurisdiction due to failure of the learned Tribunal to give reasons.

8. The question of whether or not the decision of an appellate forum suffers from legal infirmity merely on the basis that such appellate forum does not independently record reasoning for

agreeing with the reasoning of the forum whose order has been challenged before it was addressed by the august Supreme Court in ***Farooq Hussain and others Vs Sheikh Aftab Ahmad and others*** **(PLD 2020 SC 617)** wherein it held the following:

> *It is emphasised that if this Court, having examined the judgment challenged before it, is satisfied with its reasoning and conclusions and is of the view that it does not call for any interference, this Court can simply endorse the impugned judgment and adopt the reasoning of the court below. In such a case, re-tracing the same path travelled by the court below appears to be an unnecessary exercise and a waste of public time - time which can be allocated to other cases where the decisions of the courts below have been overturned or modified. Finding no reversible error in the judgment, a concise, simple order can suffice. On the other hand, if the Court is to reverse or modify the judgment of the court below, the reasons for the reversal or modification must be set forth.*
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> *3. This approach adopted by the court, is by no means a short-cut which is offensive to fair trial under Article 10-A of the Constitution nor does it in any manner undermine due process and fair-play. It is simply a creative way forward that spares the Court from writing opinions where a mere adoption of a well-reasoned judgment of the court below through a short order serves the purpose adequately.*
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> *4. Nothing is cast in stone. Old practices evolve with changing times. Burgeoning population and the corresponding rapid increase in litigation require imaginative solutions. Courts all over the world have moved on to efficient time and case management techniques. Therefore this ground for review is absolutely misconceived.*

9. The august Supreme Court has therefore clarified the question that has been raised before us. The learned Tribunal need not reappraise and re-summarize the reasoning of Commissioner (Appeals) in the event that it agrees with such

reasoning which is detailed enough to explain why it believes authority has been exercised by the tax department in accordance with law, in a just, fair and reasonable manner. The obligation of an adjudicatory forum to give reasons for its decisions surely exists. However, once the reasons have clearly been provided by an adjudicatory forum, any challenge to such reasons need not be addressed by rearticulating the reasoning as opposed to adopting it, merely in order to comply with section 24-A of the General Clauses Act, 1897. The right to fair trial as guaranteed by Article 10-A includes the right of a party to be given reasons for a decision rendered against it. But once such reasons are given by one adjudicatory forum, the agreement of the appellate forum with such reasons does not create any infirmity in such appellate decision for not rehashing such reasons.

10. For the above reasons, we do not find any infirmity in the order of the learned Tribunal. The questions listed above in Para No.1 are answered accordingly.

11. A copy of this order is directed to be sent to the Registrar of the learned Tribunal under the seal of this Court.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(BABAR SATTAR)
JUDGE

Announced in the open Court on 08-03-2022.

JUDGE **JUDGE**

Shakeel Afzal/-