

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

T.R. No.127 of 2011  
Commissioner Inland Revenue (Legal Division) RTO, Islamabad  
**Versus**  
M/s Pak Steel Re-Rolling Mills

Date of Hearing: 05.03.2020.  
Petitioner by: Mr. Saeed Ahmed Zaidi, Advocate.  
Respondent by: Sardar Abdul Wahab, Advocate.

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**FIAZ AHMAD ANJUM JANDRAN, J:-** Through this judgment, we propose to decide Tax Reference Application No.127/2011, 128/2011, 129/2011, 130/2011 and 131/2011.

2. The questions of law proposed for our consideration are as follows:-

- i. Whether on the facts and circumstances of the case the assessment of the same business made in two parts by claiming basic exemption twice to reduce the taxable income and claiming more expenses was not erroneous and prejudicial to the interest of revenue attracting the provisions of section 122(5A) of the Income Tax Ordinance, 2001?*
- ii. Whether on the facts and circumstances of the case creating of two AOPs having same partners, same share holding, same nature of business and same business premises is not a scheme of tax avoidance in terms of section 109 of the Income Tax Ordinance, 2001?*
- iii. Whether on the facts and circumstances of the case the Tribunal was justified to hold that two persons are associates u/s 85 of the Ordinance does not mean that they can be assessed together ignoring the provisions of section 108 of the Income Tax Ordinance, 2001?*
- iv. Whether on the facts and circumstances of the case the Tribunal was justified to hold that merger of AOP was not contested/appealed in spite of the fact that the department filed appeal before the Tribunal against the decision of the CIR(A) meaning thereby that the issue of joint assessment has been contested?*

3. Learned counsel for the petitioner submitted that an “individual” is recognized as a taxpayer under the provisions of the Income Tax Ordinance, 2001 (“the 2001 Ordinance”); that tax laws generally have a charging section which provides as to on whom the tax would be levied; that Section 4(1) of the 2001 Ordinance provides *inter alia* that income tax shall be imposed on every person who has taxable income for the year; that Section 80 of the 2001 Ordinance lists what is to be treated as

“persons” for the purposes of the said Ordinance; that Section 80(i)(b) of the 2001 Ordinance also includes an Association of Persons (“AOP”) in the meaning of “*persons*” for the purposes of the said Ordinance; that an AOP is to be taxed as a resident individual under Section 82 of the said Ordinance; that by virtue of Section 84 of the said Ordinance, an AOP shall be a resident AOP for the tax year if the control and management of the affairs of the AOP is situated wholly and partly in Pakistan at any time in the year; that additionally, a company or a partnership or AOP can also be issued tax numbers; that if an AOP is taxed then its members are not taxed for the business that is carried out by the AOP; and that if the AOP is not taxed for its business, then its members are taxed as individuals.

4. Furthermore, he submitted that in the instant case there were two AOPs (i.e.(i) M/s. Pak Steel Re-Rolling Mills and (ii) M/s. Pak Iron and Steel Casting); that both the said AOPs are not incorporated, but they have a common ownership; that Mian M. Aslam Fareed, Mian M. Akram Fareed and Mian M. Saqib Fareed each owned 33% shares in the said AOPs; that both the said AOPs had an integrated business for the production of steel billets; that the said two AOPs were created to divide the production line into two portions on hypothetical basis; that the said two AOPs cannot be permitted to claim that they were two different businesses or two entities for the purpose of taxation; that the accounts of the said two AOPs had been made separately so as to obtain a tax benefit; that an AOP is entitled to the same allowance as an individual i.e. there is no tax when the sales are below a certain limit; that when an income of a business is split into two, the tax slabs are changed to the benefit of the taxpayer; and that the learned Tribunal and the learned Commissioner (Appeals) have passed orders which are not just against the settled principles of law but are also perverse. Learned counsel for the petitioner prayed for the reference to be answered in positive.

5. On the other hand, learned counsel for the respondent submitted that the concurrent orders passed by the learned

Tribunal as well as the Commissioner (Appeals) do not suffer from any legal infirmity; that the two AOPs have been filing separate income tax returns; that one AOP is engaged in the business of manufacturing steel billets whereas the other is engaged in the business of iron and steel casting; that the department was unable to prove its allegation that the owners of the two AOPs had split their business only in order to obtain a tax benefit; that the learned Tribunal had correctly held that the taxpayer is to be considered innocent until proven guilty by the department; that the department did not give any evidence in support of disallowing the operating expenses; that the learned Tribunal correctly held that the mere fact that two persons are associate under Section 85 of the 2001 Ordinance does not mean that they can be taxed together; that the learned Additional Commissioner had permitted allowances of salary expenses but had unlawfully disallowed the operating expenses; and that the allowance for the operating of the two AOPs had been given on the same basis as the allowance given for the salary expenses of the two AOPs. Learned counsel for the respondent prayed for the reference to be answered in negative.

6. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

7. It is an admitted position that the two AOPs (i.e. (i) M/s. Pak Steel Re-Rolling Mills and (ii) M/s. Pak Iron and Steel Casting) have common ownership. Mian M. Aslam Fareed, Mian M. Akram Fareed and Mian M. Saqib Fareed each own 33% shares in each of the said AOPs. Each of the said AOPs has separate national tax number and had been filing separate income tax returns. The separate filing of the income tax returns was held by the Additional Commissioner (Audit) to be in violation of Section 85 of the 2001 Ordinance.

8. Section 85(i) of the 2001 Ordinance provides *inter alia* that two persons shall be associated where the relationship between the two is such that one may reasonably be expected

to act in accordance with the intentions of the other, or both persons may reasonably be expected to act in accordance with the intentions of a third person.

9. Section 85(3)(c) of the 2001 Ordinance provides that a member of an AOP and the association, where the member, either alone or together with an associate or associates under another application of this section, controls 50% or more of the rights to income or capital of the association, shall be treated as associates.

10. The learned Additional Commissioner was of the view that the creation of two AOPs was a deliberate arrangement for tax avoidance, therefore a contravention of Section 10 of the 2001 Ordinance which provides that the total income of a person is to be the sum of the person's income under each head of income for the tax year. On this basis, the assessments of the AOPs were amended under Section 122(5A) of the 2001 Ordinance, since they were considered erroneous and prejudicial to the interest of revenue.

11. Perusal of the first appellate order shows that the sole ground on which the respondents' appeal was allowed against the assessment order passed by the learned Additional Commissioner was that, the latter had allowed the salary expenses of both the AOPs, while in respect of the operating expenses, the same were allowed for Pak Steel Re-Rolling Mills and disallowed for Pak Oil and Steel Casting without giving any reasons. In paragraph 9 of the order dated 19.02.2010 passed by the learned Appellate Tribunal, the same contradiction in the order of the learned Additional Commissioner is referred to.

12. The main task before the Court is whether two separate AOPs having share holding of 33.33% each of three individuals namely Mian M. Aslam Fareed, Mian M. Akram Fareed and Mian M. Saqib Fareed, will be taxed separately/independently or as one AOP/joint association.

13. This question has been decided by the three forums earlier. The first one is the order dated 10.10.2009 passed by the Additional Commissioner Income Tax (Audit-I). Vide said

order, it was held that filing of separate tax return is for avoidance of tax and both the AOPs are liable to be assessed jointly, while the second order dated 11.11.2009 passed by the Commissioner Income Tax (Appeals-II). Vide said order, the earlier order dated 10.10.2009 passed by the Additional Commissioner was set aside being illegal and unjustified. The third order dated 19.02.2010 is passed by the Income Tax Appellate Tribunal whereby the order of the learned Commissioner Income Tax (Appeals-II) was upheld.

The last two orders are concurrent in nature and now the Department wants setting aside of the same and restoration of the first order passed by the learned Additional Commissioner Income Tax.

14. This Court is fully cognizant of the fact that the jurisdiction of this Court is confined to Section 133 of the Ordinance 2001 wherein it is provided that the High Court has the power to interfere in the order of the Tribunal only on the question of law. This fact has also been approved by the Hon'ble Supreme Court of Pakistan in case reported as "M/s Pakistan Television Corporation Limited Vs. Commissioner Inland Revenue (Legal) LTU, Islamabad and others" (2017 SCMR 1136), wherein it is held that "*Undoubtedly, a reference under Section 133 of the Ordinance would lie before the High Court on a question of law only.*"

15. For proceedings further, it would be appropriate to describe that what the question of law is?

The question of law is a question which the Court is bound to answer in accordance with a rule of law. Secondly, a question of law which is different in signification means a question as to what the law is? What the true rule of law is a on a certain matter. The question of law also means what is the law on a particular point, which provision of law is applicable to a particular factual situation.

16. Now, in the backdrop of the above stated legal position, if order of the Tribunal is examined then it demonstrates that not a single provision of law arisen, even argued before us through

which it is proved that as per facts of the case such and such provision of law is applicable through which joint assessment is permissible. Not a single provision is highlighted through which it is shown that in this factual aspect separate assessment orders would be passed. The provision of law referred and argued before us i.e. Section 85 and 85(1) of the 2001 Ordinance, by any stretch of imagination could not be described as, that assessment is liable to be made joint. Although, in the given circumstances, there is no doubt that assessment could not be made jointly and if any doubt arises in that respect then benefit of the same would be interpreted, construed and advanced in favour of the tax payer. In this respect once again we are guided by the case law M/S Pakistan Television Corporation Limited (supra) wherein it is provided as under:-

**“It is trite law that fiscal statutes, particularly the provision creating a tax liability, must be interpreted strictly and any doubt arising therefrom must be resolved in favour of the taxpayer.** In this respect, reference may be made to the judgments reported as Chairman, Federal Board of Revenue, Islamabad v. Messrs Al-Technique Corporation of Pakistan Ltd. and others (PLD 2017 SC 99), Commissioner of Income Tax Legal Division, Lahore and others v. Khurshid Ahmad and others (PLD 2016 SC 545), Zila Council Jhelum through District Coordination Officer v. Messrs Pakistan Tobacco Company Ltd. and others (PLD 2016 SC 398), Government of Sindh through Secretary and Director General, Excise and Taxation and another v. Muhammad Shafi and others (PLD 2015 SC 380) and Commissioner of Income Tax v. Messrs Eli Lilly Pakistan (Pvt.) Ltd. (2009 SCMR 1279).” [Emphasis supplied]

The same legal position has been endorsed by the Hon’ble Supreme Court of Pakistan in recent judgment reported as 2020 SCMR 420 titled **“Commissioner Inland Revenue (Legal), Islamabad Vs Messrs WI-TRIBE Pakistan Ltd. Islamabad”**.

17. The department had itself allotted independent/separate national tax numbers (NTN) to both the AOPs. Their nature of the business is distinct and even through the first order to

which the department is agreeing, only operational expenses of the second AOP (M/s Pak Iron and Steel Casting) had been disallowed while salary expenses of both the AOPs had been acknowledged. This fact, too, is sufficient to establish that separate significance of the two AOPs has been acknowledged by the department. The concurrent findings of the two forums below are based on cogent reasons.

18. For what has been discussed above, no law point has been successfully established from the order of the Appellate Tribunal which requires interference. Resultantly, the instant Tax Reference along with connected Tax References (128, 129, 130 and 131 of 2011) is answered in negative.

19. The copy of this judgment shall be send to the learned Appellate Tribunal Inland Revenue under the seal of this Court as required under the law.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

Announced in open Court on \_\_\_\_\_.

JUDGE

JUDGE

Approved for reporting.