

82/23

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Muhammad Ali Mazhar
Mrs. Justice Ayesha A. Malik

(AFR)

CIVIL PETITIONS NO.3121 TO 3125 OF 2021

[Against the judgment dated 18.01.2021 of the Islamabad High Court, Islamabad, passed in Income Tax References No.06/2003, 53 to 56/2007]

Commissioner of Income Tax, Companies ...Petitioner(s)
Zone, Islamabad (in all cases)

Versus

M/s Fauji Foundation Limited ...Respondent(s)
(in all cases)

For the Petitioner(s) : Ms. Shazia Bilal, ASC
Kamranullah, Additional Commissioner
Naeem Hassan, Secretary Litigation (FBR)

For Respondent(s) : Syed Ali Zafar, ASC
Mr. Zahid Nawaz Cheema, ASC
(through video link from Lahore)

Date of Hearing : 10.06.2022

JUDGMENT

AYESHA A. MALIK, J.- These Civil Petitions for Leave to Appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, have arisen out of judgment dated 18.01.2021, passed by the Islamabad High Court, Islamabad (**High Court**), whereby Income Tax References No.06 of 2003 and 53 to 56 of 2007 filed by the Petitioner, were dismissed.

2. The basic issue under consideration is whether the income of the assessee Fauji Foundation, from interest on

bank deposits should be considered and taxed *as income from other sources* or *as income from business*. This issue was duly considered by the Appellate Tribunal in its order dated 30.06.2000 in six ITAs with reference to the tax years 1992-1998 where it held that interest from bank accounts was in fact business income as the assessee Foundation was in the business of investing its surplus income to generate income for welfare projects. The Petitioner does not deny the findings of the order dated 30.06.2000 and in fact admits that no appeal was filed against the said order. Consequently, to the extent of the findings in law on the question *whether income from interest on bank deposits was taxable under section 30 of the ITO as income from other sources or whether it was income from the business which was exempt under clause 62 of the 2nd Schedule of the ITO* operates as *res judicata* on the Petitioner.

3. The issue in the impugned judgment is exactly the same but with reference to the assessment year 1999-2002 wherein the High Court has referred to the order of the Appellate Tribunal dated 30.06.2000 and held that the matter in issue was decided by the Appellate Tribunal which order had not been challenged by the Department, thus, has attained finality. Under the circumstances, there appears no justification to raise the matter in issue again in the subsequent tax years 1999-2002.

4. The learned counsel for the Petitioner has urged that the order of the Appellate Tribunal acts as *res judicata* for the given tax years and, therefore, is not binding for the

subsequent tax years, hence, the Department is justified in raising this plea in the subsequent tax year. However, we find no merit in this contention as a question of law and fact was decided by the Appellate Tribunal in great detail which was not challenged by the Department. Hence, on the basis of the rule of consistency they are bound by the findings on the questions of law and fact and cannot raise them again in the subsequent tax year.

5. In this case, the Respondent-taxpayer is Fauji Foundation which is a welfare trust which derives income from business activities for undertaking welfare projects. Essentially it utilises income earned from its investments for the collective benefit of the beneficiaries of the Foundation. Hence, it is the business of the Foundation to invest in business to raise income, for the purposes of its welfare projects. During the course of its assessment for the year 1999-2002 the assessee was confronted with the assessment of its income from interest on bank deposits on the ground that the same was income from other sources under Section 30 of the ITO and not business income as per Section 22 of the ITO. The Respondent-taxpayer relied on the earlier orders of the Appellate Tribunal especially that of 30.06.2000 with reference to earlier assessment years 1992-1998 where the same question of law had arisen and where the Appellate Tribunal concluded that the income from interest on bank deposits was income from business chargeable to tax under Section 22 *ibid* exempt under Part 1 Clause 62 Second Schedule of the ITO.

Since the Foundation is a welfare Trust, established under the Charitable Endowments Act 1890, notified through SRO 395 (K)/72 dated 18.3.1972, as per the notified Scheme of Administration, the Foundation can invest in industrial undertakings or otherwise, and any surplus income from these undertakings are to be utilized for the benefit of the Foundation's beneficiaries. In this context interest from bank deposits is also surplus income, used to carry out the objectives of the Foundation. Hence, it is business income and not income from other sources.

6. The Petitioner does not dispute the objects of the Foundation nor the fact that the income is used for welfare purposes. It only disputes the treatment given to income from interest on bank deposits. In this context the judgment dated 30.6.2000 looked at the record and based on facts concluded that the primary business of the Foundation was to invest money to earn money for welfare projects. We find that in such cases where the dispute relates to determining whether its business income or income from other sources, the facts have to be duly considered so as to determine the objects of the assessee company, its functions and its memorandum of association or foundation documents. Once the primary business and functions are verified, the business activities need to be assessed to see it in the perspective of the declared objects and functions. Hence, the actual work of the assessee, its tax returns and how it treats its income has to be considered, to determine whether its income is business

income or income from other sources. In this case, the facts clearly demonstrate that the income from interest on bank account is in fact business income used in furtherance of its objectives. The business activities of the Foundation and the decision given by the Tribunal have not been challenged by the Petitioner, hence, there appears to be no justification in re-arguing the entire matter again with reference to a subsequent tax year, especially when a decision has been given on the issue in law and fact. In this regard, we find that where a decision has been given on the same set of facts, it is binding on the Department and they cannot re-agitate the same issue on the same facts in a subsequent tax year. It follows that the rule of consistency must be followed by the tax authorities, as it inspires confidence and safeguards the interests of the assesseees from arbitrary decisions.

7. Under the circumstances, we find no illegality in the impugned judgment. Civil Petition Nos.3121 to 3125 of 2021 are dismissed and leave refused.

Sd/- CJ
Sd/- J
Sd/- J

Islamabad

10.06.2022

'APPROVED FOR REPORTING'

Asif/*