JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

P.T.R No.173 of 2013

Commissioner Inland Revenue

Versus

M/s Prime Commercial Bank Ltd.

J U D G M E N T

Date of Hearing.	12-01-2023
APPLICANTS BY:	M/s Liaqat Ali Chaudhry, Shehzad Ahmad Cheema, Malik Abdullah Raza and Rohil Ahmad Khan, Advocates.
RESPONDENTS BY:	M/s Syed Muhammad Ijaz, Mansoor Beg, Muhammad Hamza Rauf, Mohsin Ehsan Warraich, Muhammad Imran Khan, Ghulam Ahmad Ansari, Ashiq Ali Rana and Fahim Khadim, Advocates.

Shahid Karim, J:-. This judgment will decide a number of reference applications under Section 133 of the Income Tax Ordinance, 2001 (**"the Ordinance"**) as they arise out of a common judgment rendered by the Appellate Tribunal Inland Revenue on 07.01.2013. The formatting has been done in such a manner that the questions of law which have been urged to arise out of the judgment of the Appellate Tribunal have been narrated and the numbers of reference applications in which these questions arise have been enumerated against the questions *in seriatim*:

2. Questions Nos.1 & 2: (PTR Nos.173/2013, 177/2013)

1. *Whether on the facts and in the circumstances of the case, the hon'ble Tribunal was justified to hold that the taxation officer was not in possession of definite information for invoking provisions*

of section 122(5) whereas definite information pointing out under assessment of income was obtained from audit report based on audit conducted u/ s 177 in the case.

2. Whether on the facts and in the circumstances of the case the honourable Tribunal was justified to hold that non-issuance of notice in the prescribed form rendered the proceedings void when it has been held by the Hon'ble Supreme Court that instead of looking into technicalities, the court should look into the matter as to whether substantial compliance had been made and what prejudice was likely to cause to the party to whom show cause notice was given.

3. Learned counsel for the applicant submitted that the Appellate Tribunal went wrong in holding that there was no definite information before the Taxation Officer on the basis of which a notice under Section 122(5) of the Ordinance for amendment of the order under Section 122(1) was issued on 14.06.2004. By way of historical facts it may be stated that the audit was conducted by the Taxation Officer under delegated powers by the Commissioner of Income Tax Companies Zone-I, Lahore pursuant to which the assessment order was passed on 29.06.2004. An appeal was made to the Commissioner of Income Tax (Appeals) and finally to the Appellate Tribunal Inland Revenue which has passed the impugned judgment on different issues which arose before the Tribunal.

4. With regard to the instant questions, the precise submission of the learned counsel for the applicant is that there was definite information before the Taxation Officer to invoke the provisions of section 122(5) of the Ordinance. Contrarily, learned counsel for the respondents argued that

any amendment could have been undertaken by the Taxation Officer under powers conferred by sub-section (5A) of section 122 and not under sub-section (5) as done in the present case. In order to have a better understanding of the respective contentions, sub-section (5) and (5A) are reproduced as under:

> *"(5) An assessment order in respect of a tax year, or an assessment year, shall only be amended under sub-section (1) and an amended assessment for that year shall only be further amended under sub-section (4) where, on the basis of "definite information acquired from an audit or otherwise", the Commissioner is satisfied that--*
>
> *(i) any income chargeable to tax has escaped assessment; or*
> *(ii) total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or*
> *(iii) any amount under a head of income has been mis-classified.*
>
> *(5A) Subject to sub-section (9), the Commissioner may amend, or further amend, an assessment order, if he considers that the assessment order is erroneous in so far it is prejudicial to the interest of revenue."*

5. There is no contention that the Taxation Officer issued the assessment order by virtue of the powers conferred by sub-section (5) of section 122 and did not feel the need to invoke the provisions of sub-section (5A) to amend the assessment order. These two provisions, in our opinion, are complementary and one does not oust or nullify jurisdiction conferred by the other provision. Both the provisions relate to amendment or further amendment of an assessment order. Section 122 grants power to the Commissioner to amend an assessment order treated as issued under Section 120 by making such alteration or addition as the Commissioner considers necessary. By virtue of sub-section (5) such an

amendment can only be made on the basis of definite information acquired from an audit or otherwise. (Sub-section (5) was amended by the Finance Act, 2020 but we are concerned with the contents of sub-section (5) at the relevant time of the passing of the assessment order). As stated above, sub-section (5A) does not negate sub-section (5) in material particulars and the only distinction is that the power to amend or further amend conferred upon the Commissioner may be exercised under distinct circumstances. The power is conditional upon definite information acquired from an audit or otherwise as far as sub-section (5) is concerned whereas the power to amend or further amend is not dependent upon such a pre-condition as envisaged by sub-section (5A). Since the Taxation Officer had conducted an audit, he was of the considered opinion that any amendment to be made upon consideration of the audit paragraphs could only be done by resort to powers conferred by sub-section (5) and not by sub-section (5A) of Section 122 of the Ordinance. We do not find any irregularity in this course of action taken by the Taxation Officer. The legislature has been very clear and specific in delineating the circumstances under which sub-section (5) powers can be exercised as also the source of the definite information which may either be acquired from an audit or otherwise. Thus, in our opinion, if an audit is conducted and discrepancies are noted by the Taxation Officer, this would clearly constitute definite information to clothe Taxation Officer with the power to amend or further amend the assessment order in respect of a tax year. The Appellate Tribunal has relied upon extraneous circumstances to uphold

the order of the Commissioner (Appeals) in stating that there was no definite information with the department for amendment of the assessment order. The reliance on the case law noted in the impugned judgment has no relevance to the controversy in hand. It is one thing to hold that there was no definite information with the Taxation Officer and another to conclude that an audit properly conducted does not constitute definite information. The intention of the legislature has been expressed in the words *"definite information acquired from an audit or otherwise"* and no ambiguity can be read into these words to hold that there was no definite information with the department for completion of assessment.

6. Notwithstanding the above, even if the argument of learned counsel for the respondents is to be accepted, the assessment order can always be considered as one having been passed under sub-section (5A) of section 122. The only condition to be satisfied priorly is that invocation of the powers is subject to sub-section (9) which merely provides that an amendment or further amendment can only be made if a taxpayer has been provided with an opportunity of being heard. A reading of the assessment order passed by the Taxation Officer clearly shows that a notice in terms of sub-section (9) of section 122 was duly issued to the respondents and thus we do not harbour any doubt regarding powers of Taxation Officer to have passed the assessment order against which the appeal arose to the Tribunal.

7. The questions of law in this section are decided in favour of the applicant-department and the reference applications to this extent are allowed.

8. ***Question No.3. (P.T.R. Nos.173/2013, 174/2013, 175/2013, 176/2013, 177/2013, 180/2013)***

(i) *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to hold that only criteria for allowing the taxpayer's claim for bad debt are the prudential regulations of the Sate Bank whereas under the Income Tax Ordinance, 2001 section 29 provides the pre-requisites for declaring any loan or advance as bad debt?*

(ii) *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to hold that mere provision for non-performing loans in admissible as expense from business income, whereas sub-section (1) of section 20 of the Ordinance provides that a deduction shall be allowed for any expenditure incurred by the person in the year?*

(iii) *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal is justified to hold that provision for non-performing loans is admissible for deduction from income when its lacking ascertainability and all the events in the transaction are not yet occurred as provided u/s 34 of the Ordinance?*

9. These questions relate to provision of bad debts which have been decided by us in PTR No.184 of 2002 in the following terms:-

> *"5. Thus, the Supreme Court of Pakistan has conclusively put construction on the precise scope and sweep of section 23(i)(x) of the Ordinance, 1979 and held on the basis of the standard accounting principles that a debt becomes irrecoverable when it is written off and so the entitlement regarding deduction for bad debts was to the extent of irrecoverable loans determined as such under the regulatory framework governing financial institution. It would thus be a matter to be determined on a case to case basis whether the deduction for bad debts was allowable to a particular taxpayer / financial institution or not. This issue was required to be determined under the repealed Ordinance, 1979 by the Deputy Commissioner concerned. We, therefore, deem it proper to remit this case for the necessary determination regarding irrecoverability of a loan to the competent officer concerned under the present dispensation. This will be done by the competent officer in the light of the judgment of the Supreme Court of Pakistan set out above and to determine whether deduction for bad debts was to be allowed to a particular taxpayer individually on the basis of the treatment that has been*

given by the taxpayer / financial institution in its books of account."

The counsel for the respondent submits that these cases relate to the period after promulgation of the Ordinance, 2001. We do not harbour a doubt that this aspect was also considered by the Supreme Court of Pakistan and its holding on this aspect shall squarely apply (see paragraph 10). In the post-2001 Ordinance cases, the determination is to be made by the assesse himself.

10. The questions of law at '3' are decided in the same terms and the reference applications to this extent are *disposed of*.

11. **Question No.4. (P.T.R. Nos.173/2013, 178/2013, 179/2013, 180/2013)**

"*Whether on the facts and circumstances of the case, the Hon'ble Tribunal was justified to allow the provision of diminution of value of investment being a notional expense and lacking ascertainably as provide u/s 34 of the Ordinance?"*

Question No.5. (P.T.R. No.174/2013)

"Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal has not erred in misreading and non-reading the evidence on record that out of total claim of Rs.15,856,000 only amount of Rs.11,600,000 was added, being not taxed earlier."

The questions of law raised above have been decided by this Court in PTR No.79 of 2006 as well as PTR No.529 of 2012 (CIR v. Allied Bank Ltd.) while deciding questions No.ii and iii. These questions are also decided in terms of the cases mentioned above and the impugned order of the Appellate Tribunal is upheld. The questions of law are decided against the applicant and in favour of the respondents.

12. **Question No.6. (P.T.R. Nos.173/2013, 174/2013, 175/2013, 176/2013,177/2013,178/2013, 179/2013, 180/2013)**

"Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal is justified in holding that expenses cannot be allocated against exempt income when section 67 of the Ordinance & Rule 13 of the Rules clearly provides that where a taxpayer derives income from more than one source for income, expenses against income are to be apportioned and allocated against each category of income on proportionate bases?"

This question of law has also been decided by this Court in PTR Nos.52 to 54 of 2006 (CIT v. Prime Commercial Bank) and PTR No.529 of 2012 (CIT v. Allied Bank Ltd.) while deciding questions No.viii and ix. The judgment of the Appellate Tribunal is upheld with regard to this question and the reference application is dismissed.

13. **Question No.7. (P.T.R. No.173/2013)**

"Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal has not erred in deleting the addition made in the hands of the taxpayer bank on account of excess amount of perquisites to employees as is provided u/s 21(k) of the Income Tax Ordinance, 2001?

This question of law has also been decided by this Court in PTR Nos.52 to 54 of 2006 (CIT v. Prime Commercial Bank) and PTR No.529 of 2012 (CIT v. Allied Bank Ltd.) while deciding questions No.viii and ix. The judgment of the Appellate Tribunal is upheld with regard to this question and the reference application is dismissed.

14. **Question No.8. (P.T.R. No.173/2013)**

"Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to declare that Membership fee paid to stock exchange is not in the nature of capital whereas the same has been paid in connection with the share's investment of the taxpayer?"

The forums below have rendered a concurrent finding of fact and we do not find any question of law to arise out of the order of the Appellate Tribunal. We decline to answer the

question of law as framed and uphold the findings of the Tribunal as well as Commissioner (Appeals).

15. ***Question No.9. (P.T.R. No.173/2013)***

> *"Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to hold publicity expenses for new branches as business promotion expenses whereas the expense was made for extension of business, was capital in nature?"*

> ***Question No.10. (P.T.R. No.174/2013, 175/2013, 176/2013, 177/2013)***

> *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in holding renovation expenses of lease-hold branches as revenue in nature whereas the taxpayer itself, in the depreciation schedule, has treated renovation as capital expenses and claimed depreciation thereon*

These questions have been decided in PTR No.54 of 2006 (CIT v. Prime Commercial Bank) in the order passed by a Division Bench of this Court on 5.12.2022. These questions are also decided in favour of the respondents and against the applicant-department. The judgment of the Appellate Tribunal is upheld on these questions.

16. **Question No.11. (P.T.R. No. 173/2013, 174/2013, 175/2013, 176/2013, 177/2013, 180/2013)**

(i) *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to hold that vehicles having been given to employees as per terms of employment, depreciation could not be curtailed in the hands of the company u/s 22(3) of the Ordinance, when the vehicles are owned and shown its own assets by the company?*

(ii) *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in the holding that for personal use of vehicles addition could only be made in the hands of employees and not in the hands of the taxpayer as has been made u/s 21(k) during the year.*

(iii) *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to delete addition made u/s 20(1) of the Ordinance in the taxpayer's hands under the head traveling & motor vehicles expenses on account of expenses of personal/non-business nature in the tax year 2003.*

These questions of law have been decided by this Court in PTR No.529 of 2012 (CIT v. Allied Bank Ltd.)

while deciding question No.v. The issue has been decided in favour of the applicant-department and we do not find any reason to disagree with the decision made earlier. The reference application as regards this question(s) is allowed.

17. **Question No.12. (P.T.R. No.173/2013, 180/2013)**

> *"Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to reject finding of the taxation officer that normal life of intangible being un-ascertainable was to be adopted 10 year which was quite in accordance with the provisions of section 24(4) of the Ordinance?"*

There is a concurrent finding of fact by the Appellate Tribunal as well as the Commissioner (Appeals). The learned counsel for the applicant relied upon section 24 (4) of the Ordinance to contend that the computer software did not have a normal life of ten years and was an intangible that does not have an un-ascertainable useful life. This was agreed by the Appellate Tribunal as well as Commissioner (Appeals) where it was held as a matter of fact that computer software and programs cannot be deemed to have a useful life of ten years as technological advances are occurring at such a speed that a life of five years could be considered as a useful life and not beyond that. Since the Tribunal rendered its findings on the basis of factual ascertainment of useful life of computer software, we do not find any question of law to arise in this regard and therefore decline to answer this question of law.

18. **Question No.13. (P.T.R. No.173/2013, 180/2013)**

> *(i) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to vacate orders u/s 221 holding that there was no mistake apparent from the record whereas the fact of*

taking credit of tax beyond the period of relevant tax year was proved from the record and it was a mistake floating on the surface of the record?

(ii) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to hold that advance tax paid beyond the period of relevant tax year was adjustable in the said relevant tax year if it was paid for said tax year.

Once again both the forums below have rendered a concurrent finding of fact and upon hearing the parties we do not find any reasonable cause to differ with the findings of the two forums below. Learned counsel for the applicant relied upon section 147(8) of the Ordinance, which reads as under:

> *"147(8) A taxpayer who has paid advance tax under this section for a tax year shall be allowed a tax credit for that tax in computing the tax due by the taxpayer on the taxable income of the taxpayer for that year.*

On the other hand, learned counsel for the respondents has drawn the attention of this Court to Section 4(3)(c) to submit that these have to be read together. It is not in dispute that credit is allowed to the respondent-banks but the only difference in the respective contentions of the counsels is whether it has to be allowed within the tax year permissible to the respondent-banks or the normal financial year applicable for the purpose of taxation. This aspect has been dealt with in an elaborate and erudite manner firstly by the Commissioner (Appeals) and later on endorsed by the Tribunal with which we concur and therefore this question is decided against the applicant.

19. **Question No.14. (P.T.R. No. 174/2013, 176/2013, 177/2013, 178/2013, 179/2013, 180/2013)**

(i) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to hold deduction of a provision from business income as permissible whereas u/s 20(1) a deduction can be allowed for any expenditure which has actually been incurred by the person in the year.

(ii) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to hold deduction of a provision of liability against business income when a provision is based on an unascertainable anticipated liability.

The above question(s) of law has been decided by a Division Bench of this Court in PTR No.529 of 2012 (CIT v. Allied Bank Ltd.) while deciding question No.iv. This question is also decided in terms of the earlier judgment relied upon and is decided against the applicant and in favour of the respondents.

20. **Question No.15. (P.T.R. No. 174/2013,180/2013)**

(i) Whether on the facts and circumstances of the case, the Hon'ble Tribunal was justified to hold that compensation provided for u/s 171 is payable from the date of assessment order taken to have been mad u/s 120(1) by the Commissioner whereas sub-section (2) of section 171, for the purpose of compensation, provides specified dates which does not include the date ordered by the Hon'ble Tribunal

(ii) Whether Interpretation of law as made by the Hon'ble Tribunal by holding that compensation becomes due from the date of order u/s 120(1) is not against the well-established principle of interpretation that statutory provisions are to be construed together and not to apply one redundancy can be attributed to legislature (2005 PTD 1993(C)-SC).

Once again the two forums below have rendered a concurrent finding of fact regarding this question(s). The Appellate Tribunal relied upon an earlier order passed by the Appellate Tribunal where it was held that for the purpose of section 171 of the

Ordinance, the refund becomes due on the date it was treated to have made under Section 120(1). It may be mentioned that the department allowed compensation for the period starting from three months after the receipt of the appellate order. It further rejected the claim for the period during which the order under Section 120 was operative. In appeal, the Commissioner (Appeals) allowed compensation for this year as well against which the department filed an appeal before the Appellate Tribunal. Learned counsel for the applicant relied upon a judgment of the Supreme Court of Pakistan reported as ***2021 SCMR 1453***. We do not however find this judgment to be relevant for the present question. The department does not dispute that compensation is due on account of delayed refund. The only dispute is regarding one of the periods in question for which the compensation was denied. Sub-section (1) of section 171 is clear and unequivocal. It obliges the Commissioner to pay to the taxpayer a further amount by way of compensation where the refund due to a taxpayer has not been paid within three months of the date on which it becomes due. Thus, the two forums below were right in holding that for the purpose of sub-section (1) of section 171 of the Ordinance the refund becomes due on the date of the assessment order made under Section 120 (1). The question of law is, therefore, decided in favour of the respondents.

21. **Question No.16. (P.T.R. No.174/2013)**

Whether on the facts & in the circumstances of the case, the Hon'ble Tribunal was justified to hold that amount received on account of compensation for delayed refund was not taxable despite the fact that such income is not exempt under any of the provisions of the Income Tax Ordinance, 2001.

This issue has already been resolved by a judgment of the Supreme Court of Pakistan in *Sui Northern Gas Pipelines Ltd. V. Commissioner Inland Revenue Legal Division Large Taxpayer Unit* (**2021 SCMR 1453**). It has also been decided by this Court in PTR No.196 of 2009 and thus the question of law at 16 is decided against the respondents and in favour of the applicant.

22. **Question No.17. (P.T.R. No. 175/2013, 176/2013, 177/2013)**

(i) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal is justified in holding that the department is bound to follow earlier judgments whereas it is a settled principle of law that every judgment must be read as applicable to the particular facts proved or assumed to be proved (1994 SCMR 2213).

(ii) Whether on the facts and circumstances of the case, the Hon'ble Tribunal is justified to held that section 124A of the Ordinance, is mandatory in nature whereas the facts of the case relied upon are distinguishable from the facts of the case.

This question is not required to be answered by this Court as during the course of this judgment we have decided different issues which arose before the Tribunal as also before this Court in these reference applications.

23. **Question No.18. (P.T.R. No. 175/2013, 176/2013)**

(i) Whether on the facts and circumstances of the case, the Hon'ble Tribunal was justified in holding that premium paid in acquisition

of securities should be allowed as expenditure against income whereas said expense forming part of the purchase price of securities is of capital nature.

(ii) Whether on the facts and circumstances of the case, the claim for amortization is admissible when the expense is of tangible nature and section 24 of the Ordinance covers only intangibles

(iii) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal has erred in non-reading and misreading the evidence on record in allowing the loss on sale of securities when claim of loss was not proved by documentary evidence.

The above question(s) of law has already been decided by this Court in PTR No.529 of 2012 (CIT v. Allied Bank Ltd.) while deciding question No.xiv. This question is also decided in terms of the above judgment and against the applicant.

24. **Question No.19. (P.T.R. No. 176/2013, 178/2013, 179/2013,180/2013)**

(i) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to hold that once reversal is reduced from the charge for the year, it cannot be taxed again, whereas reversal having already availed tax relief is chargeable to tax upon its reversal and as regards the provision for non-performing advances, the same is to be reflected separately as in the tax year 2009 & 2010 it cannot exceed 1% of the total advances as per rule 1(c) of the Seventh Schedule to I.T.O 2001.

(ii) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in holding that amount of reversal be allowed to set off against the amount of provision charged in the year whereas this was tantamount to allowing of the provision to that extent in a concealed manner beyond 1% of the total advances as under rule 1(c) of Seventh Schedule, provision for non-performing advances could not be more than 1% of the total advances.

(iii) Whether on the facts and circumstances of the case, the Hon'ble Tribunal was justified to allow provision charged in the year at Rs.1705,486,000 whereas under rule 1(c) of Seventh Schedule admissible amount @ 1% of total advances worked out at Rs.720,533,910 only.

Question No.20. (P.T.R. No. 178/2013, 179/2013)

Whether on the facts & in the circumstances of the case, the Hon'ble Tribunal is justified to hold that provision for non-performing advances is to be worked out at 1% of gross advances shown in Note No.10 to the accounts whereas Rule 1(c) of the Seventh Schedule say that provision is to be restricted upto 1% of balance sheet total advances.

These questions have been decided by the Appellate Tribunal by considering the peculiar facts of the case and do not give rise to any question of law to be answered by this Court. We, therefore, decline to answer these questions having a factual connotation.

25. **Question No.21. (P.T.R. No. 177/2013)**

Whether on the facts & in the circumstances of the case, the Hon'ble Tribunal was justified to hold that a contract of sale of securities with a simultaneous commitment to repurchase the same at a specified date and price, amounts to "loan agreement" whereas the said transaction contains all the ingredients of a sale transaction and of a purchase transaction and profit arising there from is taxable.

This question of law relates to transactions which the banking companies (respondents) entered into in order to raise liquidity and is called Repurchase Agreement, commonly known as Repo ("**The Agreement**"). The Commissioner (Appeals) confirmed the addition while making observations that the agreement was not a loan agreement but a sale / purchase agreement and thus not covered by the mischief of Section 151(1)(d) of the Ordinance. In our opinion the Appellate Tribunal has rightly held that the repurchase agreement could only be characterized as a loan agreement. While relying upon the book published by SBP in collaboration with Institute of Banks Pakistan and other institutions, came to the

conclusion that the agreement was indeed a loan agreement to be caught by the exception given in section 151 (1)(d). There is no justification for holding such an agreement to be a sale and purchase agreement for it has all the trappings of a loan agreement and is a technique used by the banking companies to raise short term liquidity either from SBP or from the money market. Section 151(1)(d) provides that:

> *"151(1)(d) a banking company, a financial institution, a company referred to in [sub-clauses (i) and (ii) of clause (b)] of sub-section (2) of section 80, or a finance society pays any profit on any bond, certificate, debenture, security or instrument of any kind (**other than a loan agreement between a borrower and a banking company or a development finance institution**) to any person other than financial institution."*

The respondents seek benefit of the words which have been mentioned in brackets in clause (d) of sub-section (1) of section 151 *viz. "other than a loan agreement between a borrower and a banking company or a development finance institution*". Otherwise, the respondents were obliged under Section 151 to deduct tax at the rate specified in 1A of Part III of the 1st Schedule from the gross amount of the yield. The respondents did not do so on the plea that there was a loan agreement between the respondents and either a banking company or a development financial institution. The term 'banking company' has been defined in the Ordinance as under:

> *"banking company" means a banking company as defined in the Banking Companies Ordinance, 1962 (LVII of 1962) and includes any body corporate which transacts the business of banking in Pakistan;"*

Therefore, by the definition, a banking company is the one as defined in the Banking Companies Ordinance, 1962 and includes any body corporate which transacts the business of banking in Pakistan. The further question which ought to have engaged and determined by the Appellate Tribunal was whether the loan agreement was between the respondents and a banking company or a development financial institution. Clearly, in case the loan agreement was with State Bank of Pakistan, it is not covered by the exclusion of clause (d) of sub-section (1) of section 151 as SBP is not a banking company or a development financial institution by any stretch of imagination nor by the definition of the term 'banking company' as given in the Ordinance, 1962. This factual aspect was not determined by the three forums below and for the purpose the matter will have to be referred back to the Taxation Officer to determine precisely the nature and sweep of the loan agreement only to the extent whether it had been executed with a banking company or a development financial institution as defined in the Ordinance. If this is not the case, the respondents are not entitled to the exception given in clause (d) of sub-section (1) of section 151. We, therefore, remand the matter to conduct this inquiry to the Taxation Officer (or any

other relevant officer empowered to do so under the law). The question of law is answered accordingly.

26. **Question No.22. (P.T.R. No. 178/2013)**

(i) *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal has erred in non-reading and misreading the evidence on record in allowing the appeal because as pointed out in Para 7.3 of the assessment order, the taxpayer did not get permission of the competent authority while making the contributions as was required under the law and Rules and such contributions were not eligible for deduction.*

(ii) *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified to allow the contribution made to the gratuity fund as deduction, when the claim was not based on an ascertained liability as per provision of section 34 of the Income Tax Ordinance, 2001.*

This question (s) of law also entails a factual controversy which has been decided by the Appellate Tribunal. Moreover, an approval letter was provided to Taxation Officer to show that contribution was made in an approved fund. The question of law is decided against the applicant department.

27. **Question No.23. (P.T.R. No. 178/2013, 179/2013)**

Whether on the facts & circumstances of the case, the Hon'ble Tribunal was justified in holding that after insertion of section 100A & Seventh Schedule, the tax authorities could not re-compute income of the banks despite the fact that the Schedule envisages computation of income of banks according to provisions of the schedule as well as provisions of Income Tax Ordinance not mentioned in the said schedule.

This question of law has been decided by a Division Bench of this Court in PTR No.529 of 2012 (CIT v. Allied Bank Ltd.) while deciding question

No.x. Thus, the question of law is decided against the applicant department and the order of the Tribunal is upheld.

28. **Question No.24. (P.T.R. No. 178/2013, 179/2013)**

Whether on the facts & circumstances of the case, the Hon'ble Tribunal is justified to delete WWF being illegal, ignoring the judgment of Honorable Sindh High Court dated 01.03.2013 in CP No.D-2753 of 2009 wherein it has been held that WWF is a tax and the amendments introduced in the WWF Ordinance, 1971 through Finance Act, 2006 and 2008 respectively (Money Bills) do not suffer from any constitutional or legal infirmity.

This question of law has already been decided by the Supreme Court of Pakistan in *Workers Welfare Funds v. East Pakistan Chrome Tannery (Pvt.) Ltd.* [**(2016) 114 Tax 385**] in favour of the respondent-assessee and against the applicant department. The question of law is decided in terms of the judgment of the Supreme Court of Pakistan.

29. In view of the above, these reference applications are ***disposed of*** in the above terms.

A copy of this order shall be sent to the Tribunal under the Seal of the Court.

(RAHEEL KAMRAN) ***(SHAHID KARIM)***
JUDGE ***JUDGE***

Approved for reporting

JUDGE ***JUDGE***

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Rafaqat Ali`