

TaxHelpline Case No. 181 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

**I.T.As. Nos. 5545/LB and 5546/LB of 2005, decided on 21st
May, 2012**

**Before Shahid Jamil Khan, Judicial Member and Muhammad
Zaheer-ud-Din, Accountant Member**

**Sajjad Tasleem D.R. for Appellant. Viqar A. Khan, for
Respondent**

ORDER

SHAHID JAMIL KHAN (JUDICIAL MEMBER).---These appeals are fixed upon receiving a judgment dated 17-2-2010 by Lahore High Court, Lahore. Honourable Court has sent this judgment under its seal, as required under section 133 subsection (5) of Income Tax Ordinance, 2001. These appeals were decided by this Tribunal and following questions of law, from the judgment of Tribunal were placed before Honourable High Court:--

(i) "Whether under the facts and in circumstances of the case the learned ITAT was legally justified in holding that section 122(5A) of the Income Tax Ordinance, 2001 brought into statute through Finance Act, 2003 is not applicable to the assessments completed before the promulgation of the Income Tax Ordinance, 2001, whereas the amendment brought in through Finance Ordinance, 2002 in subsection (1) of section 122 extends the applicability of section 122 to the assessments completed under the provisions of Income Tax Ordinance, 1979 as well?

(ii) Whether under the facts and in circumstances of the case the learned ITAT was legally justified to overlook the distinction between

the provisions of law being substantive in nature i.e. the charging sections and the provisions of law relating to procedure"?

2. Since these questions had already been decided by Supreme Court of Pakistan in Elli Lilly Pakistan (Pvt.) Ltd., case 2009 PTD 1392, therefore, Honourable High Court, after reproducing relevant portion from the judgment decided all Tax References in following words:--

"As the questions of law raised in these Tax References have been answered by the Supreme Court of Pakistan, these references are, therefore, disposed of in terms of the above referred judgment of the august Supreme Court of Pakistan".

3. It is pointed out by the representatives appearing for taxpayers, that under the provisions of subsection (5) to section 133 of Income Tax Ordinance, 2001, this Tribunal is not required to pass any consequential order. In their opinion, judgments of this Tribunal "stood modified accordingly" by operation of law. The DR, appearing for the department, however, have submitted that provisions of the Repealed Income Tax Ordinance, 1979 shall apply, where this Tribunal was required to pass an order to give effect to the modification in its judgments, keeping in view the judgment by Honourable High Court. The DR has also pointed out that in some of the references, decided by the Honourable High Court the questions noted in the judgment by the Honourable High Court were not referred and the said references were inadvertently decided. It is also contended that the Tribunal has to observe that the question of law decided by the Honourable High Court did not arise from its judgment.

4. We have carefully examined the existing and repealed provisions of the Income Tax Ordinances of 2001 and 1979. Under the sub-section (6) of section 136 of the Repealed Income Tax Ordinance, 1979 the Tribunal was required to pass an order where it was necessary to dispose of the case conformably to the judgment by the High Court. Whereas in the existing provisions i.e. subsection (5) of the section 133 of the Income Tax Ordinance, 2001 the

Tribunal is not required to pass any order rather the order of Tribunal stands modified accordingly by operation of law. Relevant subsections of both the Ordinances are reproduced here:--

Section 136(6) of ITO 1979

The High Court upon the hearing of any such case, shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

Section 133(5) of ITO 2001

"The High Court upon hearing a reference under this section shall decide the question of law raised by the reference and pass judgment thereon specifying the grounds on which such judgment is based and the Tribunal's order shall stand modified accordingly. The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal."

5. After perusing both the provisions in juxtaposition we have no doubt in our mind that Tribunal has no power to comment even on the judgment delivered by the Honourable High Court. The order under the repealed provisions was only an administrative order to be communicated to the parties pointing out necessary effect of High Courts judgments to bring the order of the Tribunal in conformity with the judgment passed by the Honourable High Court. Under the new provision the order sent by the Honourable High Court is required to be placed in respective file only.

6. Be that as it may, without going into the controversy whether old or existing provision applies we direct the office to send the copy of the judgment of the Honourable High Court along with this order to respective parties. The order passed by the Honourable High Court is self-explanatory and the parties concerned are bound by this

judgment. It may, however, be observed that the cases where above noted questions of Law were wrongly placed before the Honourable High Court for opinion, as asserted by the DR, the department or the affected party may directly approach the Honourable High Court for redressal of their grievance.

Order accordingly

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