IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL STATUTORY JURISDICTION)

INCOME TAX REFERENCE APPLICATION NO. 303 OF 2018
And
INCOME TAX REFERENCE APPLICATION NO. 304 OF 2018

In the matter of:

An application under section 160 of the Income Tax Ordinance, 1984.

In the matter of:

Zen International Limited, Dhaka

…….Applicant
(In both the applications)

-V E R S U S -

The Commissioner of Taxes, Taxes Zone-10, Dhaka.

.......Respondent.
(In both the applications)

Mr. Sarder Jinnat Ali, Advocate with
Mr. Md. Delower Hossain, Advocate

.... For the Applicant
(In both the applications)

Mr. Akhtar Farhad Zaman, D.A.G. with
Mr. Md. Obaidur Rahman Tarek, D.A.G with
Ms. Shadia Afrin Shapla, D.A.G. with
Mr. Sovan Mahmud, A. A. G. with
Mr. Md. Faridul Islam, A. A. G. with
Mr. Md. Sarwar Alam Chowdhury, A. A. G. &
Mr. Shahinoor Alam Shahin, A.A.G.

……..... For the Respondent.

Heard on 18.06.2026, 16.07.2026 &
Judgment on 23.07.2026

Present:
Mr. Justice S. M. Maniruzzaman
&
Mr. Justice Dihider Masum Kabir

Dihider Masum Kabir J:

Since the parties in these reference applications are identical, and because the questions formulated for determination are similar despite the differing assessment years, these applications have been taken up together for hearing and are being disposed of by this single judgment.

These reference applications under section 160(1) of the Income Tax Ordinance, 1984 (in short, the Ordinance) are at the instant of the assessee-applicant against the orders dated 15.01.2018 passed by the Taxes Appellate Tribunal, Division Bench-1, Dhaka (in short, the Tribunal) in I.T.A. No.2279 of 2017-2018 (departmental I.T.A. No.2314 of 2017-2018) for the assessment year 2014-2015 and in I.T.A. No.2280 of 2017-2018 (departmental I.T.A. No.2315 of 2017-2018) for the assessment year 2015-2016 arising out of first appellate orders dated 02.08.2017 passed by the Commissioner of Taxes (Appeals), Taxes Appeal Zone-4, Dhaka [in short, the CT(A)] in the Income Tax Appeal Nos. 841 and 842 of 2016-2017 against the assessment orders dated 28.12.2016 passed by the Deputy Commissioner of Taxes, Taxes Circle-211, Taxes Zone-10, Dhaka (in short, the DCT).

Facts, relevant for the disposal of these reference applications, in short, are that the applicant-company is a distributor of bKash limited and its main operation involves the transfer of virtual cash among the principal, the applicant, the agent and the customers. Upon cash-out to customers, income accrues to the principal, out of which the principal pays commission approximately 11% to the applicant on the income earned through the applicant's agent.

The applicant company filed its statutory income tax returns along with the audited financial statements, disclosing total income of Tk. 67,74,081/- and Tk. 1,32,43,678/- for the assessment years 2014-2015 and 2015-2016 respectively. Thereafter, on 28.12.2016, the DCT, after hearing the applicant, completed the assessment under sections 93/83(2) and 83(2) of the Ordinance, determining total income of

Tk.3,32,10,486/- and Tk.4,25,65,781/- respectively for the assessment years under consideration.

Being aggrieved by the said assessment orders of the DCT, the applicant-assessee preferred appeals before the CT(A) which were recorded as Income Tax Appeal Nos. 841 and 842 of 2016-2017, respectively. The CT(A) in its orders dated 02.08.2017, allowed the appeals in part.

Dissatisfied with the appellate orders of the CT(A), the applicant filed appeals and the DCT filed cross-appeals before the Tribunal. After hearing both parties, the Tribunal, by its orders dated 15.01.2018, partly allowed the appeals of both parties.

Against the said order of the Tribunal, these reference applications have been filed by the applicant before this Court under section 160(1) of the Ordinance. In the midst of the hearing, Mr. Sarder Jinnat Ali, the learned Counsel appearing on behalf of the applicant, submits that although three questions were initially formulated for determination in each application, he is instructed by the applicant to press questions Nos. (ii) and (iii) in both applications, which are identical, while question No. (i) in both applications is not pressed.

Consequently, the following questions require determination:

(II) Whether, under the facts and circumstances of the case, the Tribunal was justified under section 159(2)/35(3) in vacating the order of the CT(A) and re-fixing a fresh estimate of commission receipts in excess of the disclosed amount certified under section 58 by the paying authority, and whether section 35(3) holds overriding authority over section 35(4)(c) of the I.T. Ordinance, 1984 without particularizing the defects in the certification/accounts and without rejecting the books of accounts and method of accounting?

(III) Whether, under the facts and circumstances of the case, the Tribunal was justified under section 159(2)/29(1)(xxvii) in upholding the disallowance on account of 'loss on burglaries', insofar as the risk of loss is incidental to the very nature of the business and such incidental expenditure is allowable under section 29(1)(xxvii) of the I.T. Ordinance, 1984?

Mr. Sarder Jinnat Ali, the learned Counsel for the applicant, submits that the applicant-company maintained books of accounts for the years under reference employing the international accounting system adopted in Bangladesh, in full compliance with the statutory requirements of section 35(3) of the Ordinance. Day-to-day transactions were recorded in individual vouchers supported by relevant bills. Based on these books, the applicant prepared financial statements reflecting all transactions during the year. The applicant also engaged a Chartered Accountant to verify the accounts against relevant documents and evidence. The Chartered Accountant examined the entirety of the records in line with standard auditing systems and certified the accounts as fair and correct. While computing business income, the DCT partly disallowed various heads of expenditure including loss on burglaries claimed in the profit and loss account and further estimated commission receipts on a trading version.

Mr. Ali further submits that the CT(A) failed to appreciate the facts and legal merits of the case and affirmed certain disallowances, including loss on burglaries, while reducing or deleting others under various heads of the profit and loss account. Conversely, the CT(A) correctly deleted the estimation of commission receipts, observing that the disclosed receipts were verifiable and reflected in the bank statements.

Mr. Ali goes to argue that the Tribunal was not legally justified in upholding disallowances without pinpointing specific defects in particular items of expenditure, and without issuing further notice under section 83(2) of the Ordinance calling for additional evidence. He also submits that the Tribunal erred in estimating commission receipts on a trading version under section 35(4)(c) of the Ordinance without explicitly rejecting the applicant's books of accounts and accounting method.

He further contends that the Tribunal erred in vacating the CT(A)'s order and re-fixing commission receipts in excess of the disclosed and section 58-certified figures, noting that section 35(3) holds overriding authority over section 35(4)(c) of the Ordinance.

Additionally, Mr. Ali submits that the Tribunal was unjustified in upholding the disallowance of “loss on burglaries”, as such risk is directly incidental to the nature of the business, and thus allowable under section 29(1)(xxvii) of the Ordinance.

Countering these contentions advanced by the applicant-assessee, Ms. Shadia Afrin Shapla, the learned Deputy Attorney-General appearing on behalf of the respondent-Government submits that the applicant was required to place verifiable documents supporting its claimed expenses and commission receipts alongside its return. The applicant having defaulted, the DCT issued statutory notices under sections 79 and 83(1) of the Ordinance and completed the assessment after thoroughly examining the produced documents. Despite multiple opportunities, the applicant failed to provide corroborative proof.

She relying on the decision in *Commissioner of Income-Tax, Dacca Zone, Dacca -vs- M/s Ata Hossain Khan Ltd.*, reported in 28 DLR (AD) 141, submits that there is no statutory mandate compelling the tax authorities to accept, without question, accounts merely because they have been audited by a Chartered Accountant. The requirement of law is that the income tax officer is to compute profits upon such a basis and in such a manner as he may determine.

The learned DAG further submits that question (II) is defective, untenable, and does not arise from the impugned order, as the applicant failed to produce adequate verifiable documents. The DCT had no choice but to resort to section 35(4) of the Ordinance. Owing to the lack of verifiable records, income could not be deduced from the disclosed books alone.

She next submits that question (III) is likewise defective and untenable, as section 29(1)(xxvii) provides no scope to allow loss claims arising from burglary.

Finally, the learned Deputy Attorney-General urges that the grounds set forth in the reference applications are defective, misleading, misconceived, and untenable in law. Consequently, she contends that the reference questions ought to be answered in the affirmative against the applicant-assessee and in favor of the respondent.

We have carefully considered the submissions of the learned Counsel appearing for the applicant as well as the learned Deputy

Attorney-General for the respondent-Government, and have meticulously perused the reference applications, the supplementary affidavit filed by the applicant, the affidavit-in-reply, and all other relevant materials placed on record.

The main thrust of the argument on behalf of the applicant before this Court is that since the applicant maintained a mercantile or "commercial" system of accounting under section 35(3) of the Ordinance and filed its returns accompanied by audited statements of accounts certified by a firm of Chartered Accountants, the same should have been accepted in absence of any specific objection or finding under section 35(4)(a) or (b) of the Ordinance.

To gain a clear understanding of the legal implications, we have gone through the provisions of section 35 of the Ordinance and we find that the DCT is indeed empowered to reject an assessee's accounts. However, the power of the DCT to reject the books of account is discretionary, not absolute. It is a quasi-judicial function that must be exercised within the bounds of reason and fairness. Any rejection of accounts must be based on tangible defects and supported by a speaking order; otherwise, such an action constitutes an arbitrary exercise of authority that cannot withstand judicial scrutiny.

The records of the instant case reveal that certain heads of expenditure including loss on burglaries claimed in the profit and loss account made by the applicant were not accepted by the DCT due to the non-production of supporting evidence, leading the DCT to apply the theory that the “past record of the case is the best record”. This is not a question of the acceptability of the accounting system itself, but rather a failure by the assessee-applicant to provide evidence in support of claimed expenses.

It transpires from the assessment order for the assessment year 2014-2015 that the DCT estimated commission receipts stating that the claim was not verifiable through supporting documents which is reproduced as follows for ready reference:

> " আলোচ্য করবর্ষে করদাতা কোম্পানী বিকাশ (mobile financial service provider) লিঃ এর ডিস্ট্রিবিউটর হিসাবে ব্যবসা খাতে আয় প্রাপ্ত হইয়াছে। প্রতিনিধি শুনানীকালে ব্যাংক বিবরণী, বেতন বিবরণী, বিল অব এন্ট্রি, উৎসে কর কর্তনের বিবরণী, বিক্রয় বিবরণী ইত্যাদি দাখিল করেন।''

In discussing trading account the DCT also stated,

> "**প্রাপ্তি হিসাব পর্যালোচনা ঃ**
>
> করদাতা কোম্পানী বিকাশ (mobile financial service provider) লিঃ এর ডিস্ট্রিবিউটর হিসাবে ব্যবসা খাতে আয় প্রাপ্ত হইয়াছে। অত্র সনে ট্রানজেকশন কমিশন বাবদ ও KYC কমিশন বাবদ মোট প্রদর্শিত প্রাপ্তি টাঃ ৬,১৮,৬৪,০৫৮/-। উক্ত প্রাপ্তির সমর্থনে করদাতা কোম্পানী বিস্তারিত বিবরণী, ব্যাংক বিবরণী ও সমন্বয় বিবরণী লিখিত অধিযাচন প্রদান করা সত্ত্বেও দাখিল করেনি। নথির রেকর্ড দৃষ্টে দেখা যায়, করদাতা কোম্পানী পূবালী ব্যাংক লিঃ , ইউসিবিএল, ব্র্যাক ব্যাংক লিঃ, ইসলামী ব্যাংক বাংলাদেশ লিঃ, ন্যাশনাল ব্যাংক লিঃ, মিউচুয়াল ট্রাস্ট ব্যাংক লিঃ, সোশ্যাল ইসলামী ব্যাংক লিঃ ও ডাচ বাংলা ব্যাংক লিঃ এ ব্যাংকিং কার্যক্রম পরিচালনা করে। পরিচালিত সমুদয় ব্যাংক হিসাবসমূহের পূর্ণাঙ্গ বিবরণী দাখিল করা হয়নি। ফলে করদাতা কোম্পানীর পূর্ণাঙ্গ ব্যাংক হিসাবসমূহের অবর্তমানে প্রদর্শিত কমিশন প্রাপ্তি সম্পূর্ণ যাচাইযোগ্য বিবেচনা করা যায়না। এমতাবস্থায়, করদাতা কোম্পানীর প্রদর্শিত ট্রানজেকশন কমিশন ও KYC কমিশন বাবদ প্রাপ্তি অগ্রাহ্য করিয়া প্রাক্কলন করা হলো- টাঃ ৬,৮০,০০,০০০/-
>
> বাদঃ প্রদর্শিত কমিশন প্রাপ্তি......টাঃ ৬,১৮,৬৪,০৫৮/-
>
> পার্থক্য... টাঃ ৬১,৩৫,৯৪২/-''

The CT(A) is his appeal order dated 02.08.2017, affirmed certain disallowances including loss on burglaries and reduced or deleted certain disallowances under different heads of the profit and loss account upon considering the facts, circumstances and legal points of the case.

The CT(A) deleted the estimation of commission receipts which is reproduced below:

> “আপীল পূর্ববর্তী ২০১৩-১৪ করবর্ষে কমিশন প্রাপ্তি ১,৯৭,৭২,৪৮০/- প্রদর্শিত হলে উপ কর কমিশনার কর্তৃক গৃহীত। আলোচ্য করবর্ষে উপ কর কমিশনার কর্তৃক কমিশন প্রাপ্তি প্রাক্কলন করা হলেও তার সমর্থনে গ্রহণযোগ্য তথ্যের উল্লেখ করা হয়নি। করদাতার কমিশন প্রাপ্তি প্রদর্শিত প্রতিষ্ঠানের প্রত্যায়নপত্রের ভিত্তিতে যাচাইযোগ্য এবং ব্যাংক বিবরণীতে প্রতিফলিত।
>
> **সিদ্ধান্তঃ**
>
> **যথাযথ না হওয়ায় কমিশন প্রাপ্তি ৬,৮০,০০,০০০/- প্রাক্কলনের কার্যক্রম বাতিল করা হলো।**’’

Therefore, after hearing the parties, the Tribunal, in its order dated 15.01.2018, affirmed the orders of the CT(A) regarding disallowances from the profit and loss account, except for the disallowance under the head 'Salary and Allowances', and directed the DCT to re-examine the documents regarding salary and allowances after giving the assessee an opportunity of being heard, and thereafter dispose of the issue as per law.

Regarding commission receipts, the Tribunal vacated the order of the CT(A) and directed the DCT to estimate commission receipts at Tk. 6,30,00,000/- for the assessment year 2014-2015, observing as follows:

> “At the time of hearing before Tribunal learned A.R. could not produce any evidence before Tribunal in support of shown commission receipt. In this circumstances, we think there was reason to estimate the commission receipt. So, we vacate the order of learned C.T.(Appeals) and directed the DCT to estimate commission receipt of Tk. 6,30,00,000/-

> for the assessment year 2014-2015 and Tk. 8,20,00,000/- for the assessment year 2015-2016.’’

The above orders reveal that disallowances of claimed expenses, including loss on burglaries from profit and loss accounts, are purely factual matters involving no complex question of law. Furthermore, the estimation of commission receipts is also a factual matter unless proved otherwise with verifiable evidence. In the instant case, the applicant received commission from bKash Limited (a BRAC Bank company), and at the time of payment, tax was deducted at source from the commission under section 52AA of the Ordinance at 10%, which was subsequently deposited into the government treasury.

However, it appears from the record that bKash limited issued a certificate in favour of the applicant, which is supported by TDS chalans. The DCT also credited the TDS amount in I.T.30 form. The DCT admitted that the applicant, in support of its audited statement of account, produced bank statements from Pubali Bank Ltd., UCBL, Brac Bank Ltd., Islami Bank Bangladesh Ltd., National Bank Ltd., Mutual Trust Bank Ltd., Social Islami Bank Ltd. and Dutch Bangla Bank Ltd. as well as bills of entry, TDS challans, sales statements etc. However, in the assessment order, observing “পরিচালিত সমুদয় ব্যাংক হিসাবসমূহের পূর্ণাঙ্গ বিবরণী দাখিল করা হয়নি। ফলে করদাতা কোম্পানীর পূর্ণাঙ্গ ব্যাংক হিসাবসমূহের অবর্তমানে প্রদর্শিত কমিশন প্রাপ্তি সম্পূর্ণ যাচাইযোগ্য বিবেচনা করা যায় না।” the DCT estimated commission receipts at Tk.6,80,00,000/- instead of the declared Tk.6,18,64,058/-. The DCT made this estimation without pinpointing the shortfall period in the bank statement, relying on a vague observation that full statements were not produced, without verifying other documents, and without requesting further records. Interestingly, in reconciling the bank statements, the DCT determined total bank deposits for the year under consideration and accepted them, observing "ব্যাংক জমা করদাতা প্রতিষ্ঠানের ব্যবসার ধরন, প্রকৃতি ইত্যাদি বিবেচনায় গৃহীত হলো।" which clearly shows inconsistency.

Annexure-D (Form I.T.30) reflected that the DCT, after examining the certificate and TDS chalans, credited/adjusted the TDS amount of Tk.61,93,092/-, The applicant disclosed revenue (commission receipts) of **Tk.6,18,64,058/-** and in note-6.00 of the audited statement of accounts, detailed tax deducted at source by bKash at **Tk.61,86,406/-** and tax deducted at source by bank at Tk.6,686/-, totaling a TDS amount of Tk.61,93,092/-. Section 52AA of the Ordinance provides that the paying authority, at the time of paying any commission, shall deduct income tax at the rate of **ten percent** on the amount payable.

The DCT admitted that the applicant received commission from bKash Limited only and that the TDS amount was at Tk.61,86,406/-. Given the applicable TDS rate of 10% under section 52AA of the Ordinance, TDS of Tk.61,86,406/- was generated by commission amount of Tk.6,18,64,058/- [(61,86,406 X 100) / 10]. This principle mandates that the DCT has no alternative but to accept the disclosed commission receipts.

In the instant case, it cannot be said that commission receipts are purely a factual matter or that the commission receipts were estimated due to non-production of supporting evidence.

In the case of Bangladesh Sugar and Food Industries Corporation and others -vs- Md. Shamsuddin Sheikh reported in 73 DLR (AD) 46, held that,

”Every decision is made on the facts and circumstances of a particular case and the decision is to be read along with the facts of that case”

In this regard, we find that the applicant had several opportunities to provide corroborative documents before the DCT and explain its claimed expenses in the profit and loss account, but the applicant miserably failed to do so. The DCT, after thoroughly examining the produced papers and documents, disallowed some expenses which is tenable. Per contra the DCT's estimated calculation of commission receipts is not tenable in the eye of law.

Upon considering the facts and legal points of the case and after hearing the applicant, the CT(A) rightly affirmed certain disallowances including loss on burglaries, on the ground that such disallowances seemed just and fair; however, it reduced or deleted certain disallowances under different heads of the profit and loss account upon considering the facts and legal points of the case and vacated the order of estimation of commission receipts in the trading account, observing that the disclosed receipts were verifiable and reflected in the bank statement.

The Tribunal is competent to decide all questions of fact and law and serves as the final arbiter of factual matters. In the instant case, the Tribunal affirmed the order of the CT(A) regarding disallowances from profit and loss account except under the head of “salaries and allowances” and directed the DCT to re-examine and dispose of the issue as per law. These disallowances are purely factual matters involving no complex question of law. We are of the view that we should not disturb the factual findings legally settled by the Tribunal.

The decision in the case of Commissioner of Taxes -vs- Conference and Exhibition Management Service Ltd. reported in 25 BLC (AD) 15 among many other cases, supports the above views.

Per contra, regarding commission receipts, the Tribunal, without considering the facts and circumstances of the case, alongside the existing records including assessment order and the order of the CT(A) and the provision of section 52AA of the Ordinance, vacated the order of the CT(A) and directed the DCT to estimate the commission receipts at Tk.6,30,00,000/- and Tk.8,20,00,000/- respectively. From the above discussion, we are of the view that he Tribunal without applying judicial mind estimated the commission receipts.

For the reasons and discussions set forth above and upon considering the relevant legal provisions and judicial precedents regarding the disallowances we find no merit in the applicant's contentions; regarding the estimation of commission receipts, we find merit in the applicant's contentions.

Therefore, question No. (II) formulated in these income tax reference applications regarding disallowance of expenses is answered in the affirmative that is, against the assessee-applicant and in favour of the respondent and the question formulated regarding estimation of commission receipts is answered in the negative that is in favour of the applicant and against the respondent.

Question No. (III) formulated in these income tax reference applications is answered in the affirmative that is, against the assessee-applicant and in favour of the respondent.

Accordingly, these income tax reference applications succeed in part.

However, there shall be no order as to costs.

The Registrar of the High Court Division of the Supreme Court of Bangladesh is directed to take necessary statutory steps in accordance with section 161(2) of the Income Tax Ordinance, 1984, read with section 294(2) of the Income Tax Act, 2023.

S.M. Maniruzzaman, J

I agree.