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

INCOME TAX REFERENCE APPLICATION NO.582 OF 2019

In the matter of:
An application under section 160(1) of the Income Tax Ordinance, 1984

In the matter of:

IPCO Developments (Bangladesh) Limited.

…….Applicant.

-V E R S U S -
The Commissioner of Taxes, Taxes Zone-6, Dhaka.

....Respondent.

Mr. Sarder Jinnat Ali, Advocate, with
Mr. Md. Delowar Hossin, Advocate

.... For the Applicant.

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. Nazmul Haque, A. A. G. with
Mr. Sarwar Alam Chowdhury, A.A.G and
Mr. Shahinoor Alam (Shahin), A.A.G

……... For the Respondent.

Heard on 11.06.2026, 18.06.2026 &
Judgment on 28.06.2026

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

Dihider Masum Kabir J:

This reference application under section 160(1) of the Income Tax Ordinance, 1984 (in short, the Ordinance), is at the instance of the assessee-applicant against an order of the Taxes Appellate Tribunal, Division Bench-1, Dhaka (in short, the Tribunal) passed in Income Tax Appeal No.3568 of 2018-2019 (Assessment year 2016-2017) dated

27.02.2019 which was received by the applicant on 09.05.2019 arising out of the order dated 22.10.2018 passed by the Commissioner of Taxes (Appeals), Taxes Appeal Zone-2, Dhaka [in short, the CT(A)] which had affirmed the assessment order dated 04.12.2016 passed by the Deputy Commissioner of Taxes, Taxes Circle-113 (Companies), Taxes Zone-6, Dhaka (in short, the DCT).

Facts, relevant for the disposal of the reference application, in short, are that the applicant is a company limited by shares, incorporated under the Companies Act, 1994 with the object of running a 3 star hotel and shopping business. To this end, it has started the construction of its building. The applicant, as an assessee bearing TIN-143493372195 submitted its income tax return for the assessment year 2016-2017 showing total income 'Nil' which was assessed by the DCT on 04.12.2016 under section 83(2) of the Ordinance assessing total income as 'Nil' and also issued a 'Nil' demand notice.

Challenging the said assessment order passed by the DCT, the applicant preferred an appeal before the CT(A) which was disposed of on merit and the CT(A) affirmed the order of the DCT by his order dated 22.10.2018.

Being aggrieved by and dissatisfied with the appellate order dated 22.10.2018, the applicant preferred a second appeal, being Income Tax Appeal No.3568 of 2018-2019 before the Tribunal. After hearing both parties, the Tribunal passed an order dated 27.02.2019 wherein it declined to interfere with the order of the CT(A) and upheld the same.

Under the facts and circumstances of the case, the assessee-applicant filed the instant reference application before this Court under section 160(1) of the Ordinance, seeking answers to the following question:

I) Whether on the facts and in the circumstances of the case, the Tribunal u/s.159(2)/35(3)(a) of the Ordinance read with the Companies Act, 1994 was justified in upholding CT(A)'s rejection of claim of business loss on mere ground for non-accrual of income to the year while the applicant sustained loss in the execution of economic activities, addition in the work in progress in continuation of business in as much as the CT(A) maintained order of the DCT who acted in violation of principle of accounts and the provision of sub-section 3(a) of section 35 of the Ordinance read with the Companies Act, 1994?

Mr. Sarder Jinnat Ali, the learned Counsel appearing on behalf of the applicant, submits that during the assessment year under consideration, the applicant added construction costs to its work-in-progress to the tune of Tk.126,20,54,854/-. These ongoing expenses are directly integrated with the cost of construction and have been capitalized, as noted in note Nos.7 and 7.1 of the balance sheet. Mr. Ali further submits that the applicant maintains offices to procure materials, manage purchases, and pay for supplies, labour, and other costs necessary to follow up on construction agreements, as well as to pay utility bills such as gas and electricity and manage other logistics. For this purpose, the applicant incurred revenue expenses amounting to Tk. 1,03,53,084/-, as detailed in note No. 14, which includes the depreciation of property, plant, and equipment as per note No. 5 of the audit report.

The applicant has properly maintained its books of account and prepared its financial statements in compliance with the Bangladesh Accounting Standards (BAS), Bangladesh Standards on Auditing (BSA), and Bangladesh Financial Reporting Standards (BFRS), as well as the provisions of company law applicable to private limited companies. The learned Counsel argues that since these expenses were incurred in the execution of economic activities wholly and exclusively for the purpose of the business, they constitute a permissible loss under the prescription of section 35(3)(a) of the Ordinance.

Mr. Ali then argues that the DCT while framing assessment, investigated the additions to the “work in progress” regarding the construction cost of a building area spanning 14,83,365 square feet, to the tune of Tk.126,20,54,854/-. Finding these expenditures genuine and correct, the DCT accepted them. Furthermore, the DCT examined the expenditure items liable for the deduction of advance tax and verified that the proof of deduction was correct. However, in the course of the assessment, the DCT failed to allow the business loss of Tk. 1,03,53,084/- solely on the ground that the applicant had generated no income from business activities during the year.

Mr. Ali lastly submits that the Tribunal erred in law in upholding CT(A)'s rejection of the claimed business loss on the ground for non-accrual of income for the year. He contends that the applicant sustained a genuine loss in the execution of economic activities and additions to work-in-progress in the continuation of its business. Consequently, by maintaining the order of the DCT who acted in violation of standard accounting principles and the provision of sub-section 3(a) of section 35 of the Ordinance read with the Companies Act, 1994. Therefore, the Tribunal's decision is illegal, violates the applicable provisions of the Ordinance, and is liable to be set aside in the interest of justice.

Ms. Shadia Afrin Shapla, the learned Deputy Attorney General appearing on behalf of the respondent-Government submits that tax authorities are under no legal mandate to blindly accept accounts audited by a Chartered Accountant without proper scrutiny. The requirement of the law is that the income tax officer must compute profits or losses based upon, and in the manner prescribed by the Ordinance.

The learned DAG further submits that the order passed by the Tribunal, confirming the order of the CT(A) is fair, lawful and fully justified under the provisions of the Ordinance. She contends that the applicant-assessee has misinterpreted the legal provisions. The applicant's claimed expenses of Tk.1,03,53,084/- do not qualify as allowable expenses under section 29 of the Ordinance because the applicant had no active income from business activities under section 28 of the Ordinance during the year. Moreover, the applicant-assessee explicitly disclosed its income as "Nil" in its income tax return.

The learned DAG finally urges that the ground raised in the reference application is defective, misleading, misconceived, and legally untenable. Accordingly, she submits that the question raised in the reference application should be answered in the affirmative that is, against the applicant and in favour of the respondent-Government.

We have considered the submissions of the learned Counsel for the applicant and the learned Deputy Attorney General for the respondent-Government and perused the reference application, affidavit-in-reply and other materials on record.

The main thrust of the argument on behalf of the applicant before this Court is that the applicant maintained a mercantile or "commercial" system of accounting under section 35(3) of the Ordinance and filed a return accompanied by an audited statement of accounts. The applicant argues that since the accounts had been audited by a firm of Chartered Accountants, showing that the applicant incurred revenue expenses amounting to Tk.1,03,53,084/- as detailed in note No. 14, which includes the depreciation of property, plant, and equipment as per note No. 5 of the audit report, the said report should have been accepted in the absence of any objection or adverse finding under section 35 of the Ordinance.

To gain a clear understanding of the legal implications of section 35 of the Ordinance on the impugned action, we have examined its provisions. We find that taxable income must be assessed by the DCT in strict compliance with the provisions of the Ordinance and the Rules made thereunder. While the DCT is indeed empowered to reject an assessee's accounts, this power to disallow books of accounts 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 learned Counsel appearing for the applicant emphasized that because the accounts presented to the tax authorities had been audited by a Chartered Accountant, they could not be questioned and the revenue expenses would be treated as business loss though there is no business income this year. We find such a submission unacceptable. Even accounts audited by a Chartered Accountant must conform to the provisions of the Ordinance and the Rules, and must also be supported by corroborative evidence.

However, the records of the instant case reveal that the DCT did not disallow the accuracy of the claimed expenses themselves. Rather, the commercial operations of the assessee's business had not yet commenced during the period under consideration. Despite this, the applicant claimed a portion of its capital investment as revenue expenses and further claimed that this amount should be treated as a business loss, even though the applicant itself disclosed its total income as "Nil" in its income tax return. The DCT on 04.12.2016 assessed the income tax return under section 83(2) of the Ordinance assessing total income 'Nil'. The relevant portion of assessment order is quoted below as under for ready reference:

> "৪। লাভ ও ক্ষতি হিসাব বিশ্লেষন ঃ-
>
> করদাতা কোম্পানী অত্র বছরে কোন ব্যবসা শুরু করেন নাই। অর্থ আইন, ২০১৬, তে সন্নিবেশিত বি এ এস, বি এফ আর এস ও বি এস এ অনুযায়ী হিসাব রক্ষন ও নিরীক্ষা কার্যক্রম চালু করায় অত্র বছরে লাভ ও ক্ষতি হিসাবে রেভিনিউ জাতীয় খরচ সমূহ প্রদর্শিত হয়েছে যাহার পরিমাণ ১,০৩,৫৩,০৮৪/- টাকা। ইতিপূর্বে এই জাতীয় খরচ সমূহ মূলধনী খরচ হিসাবে বিবেচনা করা হয়েছিল। ফলে, অত্র বছরে করদাতা এই খরচ "ব্যবসায় ক্ষতি" বলে দাবী করেছেন। যাহা গ্রহনযোগ্য নয় কারন, এই খরচের বিপরীতে কোন "আয়" নাই।"

Thereafter, the CT(A) in his order dated 22.10.2018 affirmed the order of the DCT which is quoted below:

> **"২নং দাবীঃ**

আপীল আপত্তির প্রেক্ষিতে কর নির্ধারণী আদেশ পরীক্ষায় দেখা যায় যে, করদাতা কোম্পানী অত্র বছরে কোন ব্যবসা শুরু করে নি। অর্থ আইন ২০১৬,তে সন্নিবেশিত বিএএস, বিএফআরএস ও বিএসএ অনুযায়ী হিসাব রক্ষণ ও নিরীক্ষা কার্যক্রম চালু করায় অত্র বছরে লাভ ও ক্ষতি হিসাবে রেভিনিউ জাতীয় খরচ সমূহ প্রদর্শিত হয়েছে যার পরিমাণ ১,০৩,৫৩,০৮৪/-টাকা। ইতিপূর্বে এ জাতীয় খরচ সমূহ মূলধনী খরচ হিসাবে বিবেচনা করা হয়েছে। অত্র বছরে করদাতা এ খরচ 'ব্যবসায় ক্ষতি' বলে দাবী করেছেন যা গ্রহণযোগ্য নয়। কারণ এ খরচের বিপরীতে কোন "আয়" নেই। অতএব, উপকর কমিশনারের গৃহীত কার্যক্রম আইনানুগ বিবেচনায় **বহাল** রাখা হলো।"

On the basis of the second appeal preferred by the applicant, the Tribunal in its order dated 27.02.2019, upheld the order of the CT(A) which is quoted below for ready reference:

> "We have heard both the contending sides and perused records of the case. At the time of hearing before tribunal, learned A.R. could not justify the claim. Considering the facts and argument of learned A.R. and learned D.R. we are of the opinion that the decision of the learned C.T (Appeals) in this regard is justified and reasonable. Hence, we decided very judiciously not to interfere with the order of the learned C.T. (Appeals) and the same is upheld. Therefore, the ground taken by the assessee fails."

To have a clear understanding with regard to the legal implications of the provisions of computation of income, we have to go through the definitions of 'business' and 'income' under clauses (14) and (34) of section 2 and provisions of sections 28 and 29 of the Ordinance, we feel it expedient to reproduce the provisions here for ready reference which run as follows:

2(14) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

2(34) "income" includes—

(a) any income, profits or gains, from whatever source derived, chargeable to tax under any provision of this Ordinance under any head specified in section 20;

(b) any loss of such income, profits or gains;

(c) the profits and gains of any business of insurance carried on by a mutual insurance association computed in accordance with paragraph 8 of the Fourth Schedule;

(d) any sum deemed to be income, or any income accruing or arising or received, or deemed to accrue or arise or be received in Bangladesh under any provision of this Ordinance:

Provided that the amount representing the face value of any bonus share or the amount of any bonus declared, issued or paid by any company registered in Bangladesh under কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নং আইন) to its shareholders with a view to increase its paid-up share capital shall not be included as income of that shareholder;

28. Income from business or profession.—

(1) The following income of an assessee shall be classified and computed under the head "Income from business or profession", namely: —

(a) profits and gains of any business or profession carried on, or deemed to be carried on, by the assessee at any time during the income year;

(b) income derived from any trade or professional association or other association of like nature on account of specific services performed for members;

(c) value of any benefit or convertible into money or not, arising from perquisite, whether business or the exercise of a profession;

(d) the amount, the value of the benefit and the trading liability referred to in section 19(15);

(e) the excess amount referred to in section 19(16),

(f) the excess amount referred to in section 19(18);

(g) the sale proceeds referred to in section 19(20);

(h) the amount of income under section 19(23).

Explanation.- Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business.

(2) Notwithstanding anything contained in this Ordinance,

(a) the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the provisions of the Fourth Schedule;

(b) the profits and gains from the exploration and production of petroleum (including natural gas) and the tax payable thereon shall be computed in accordance with the provisions of Part A of the Fifth Schedule;

(c) the profits and gains of any business which consists of, or includes, the exploration and extraction of such mineral deposits of a wasting nature (not being petroleum and natural gas) as may be specified in this behalf by the Government, carried on by an assessee in Bangladesh shall be computed in accordance with the provisions of Part B of the Fifth Schedule.

(3) Notwithstanding anything to the contrary contained in any other provisions of this Ordinance, in the case of Bangladesh Development Bank Ltd., Investment Corporation of Bangladesh, and any commercial bank including the Bangladesh Krishi Bank and Rajshahi Krishi Unnayan Bank, the income by way of interest in relation to such categories of bad or doubtful debts as the Bangladesh Bank may classify in the income year in which it is credited to it profit and loss account for that year or, as the case may be, in which it is actually received, whichever is earlier.

29. Deductions from income from business or profession. —

(1) In computing the income under the head "Income from business or profession", the following allowances and deductions shall be allowed, namely:-

(i) the amount of any rent paid for the premises in which the business or profession is carried on:

Provided that if a substantial part of the premises is used by the assessee as a dwelling-house, the amount shall be a proportionate part of the rent having regard to the proportionate annual value of the part so used:-

(ii) the amount paid for the repair of the hired premises in which the business or profession is carried on if the assessee has undertaken to bear the cost of such repair:

(iii) -------------

(iv) -------------

(v) -------------

(vi) -----------

(vii) -----------

(viii) in respect of depreciation of building, machinery, plant or furniture, being the property of the assessee or bridge or road or fly over owned by a physical infrastructure undertaking and used for the purposes of business or profession, the allowances as admissible under the Third Schedule;

A combined reading of the provisions of law, alongside the facts and circumstances of the instant case, reveals that for the purpose of computing income or losses, an assessee must first have income under section 28 of the Ordinance. From that income, allowable expenses shall be deducted under section 29 of the Ordinance, subject to certain circumstances where deductions are not admissible as provided under section 30 of the Ordinance.

In the instant case, there is no income under section 28; hence, the question of allowing deductions under section 29 of the Ordinance does not arise. It is for this reason that the DCT assessed the total income as 'Nil'. Expenses incurred during the pre-operation stage of a business are to be treated as capital investment, forming a part of the asset heads in the balance sheet. The claimed expenses of the applicant cannot be treated as revenue expenses, as they do not meet the criteria laid down under section 29 of the Ordinance.

Therefore, the DCT acted in strict compliance with the provisions of the Ordinance and the Rules made thereunder, assessing the income tax return in accordance with the law. Consequently, the CT(A) and the Tribunal rightly affirmed the assessment order passed by the DCT."

The applicant surprisingly and repeatedly cited "section 35(3)(a) of the Ordinance" erroneously throughout its submission, failing to realize that no such provision exists in the Ordinance in that specific format.

In the case of *Bangladesh Sugar and Food Industries Corporation and others -vs- Md. Shamsuddin Sheikh*, reported in 73 DLR (AD) 46, the Appellate Division 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 light of the discussions made above, and under the facts and circumstances of the case, we find that the Tribunal was fully justified in upholding the rejection of the claim of business loss. The statutory mechanics of the Ordinance dictate that business deductions cannot be claimed against a non-existent revenue stream prior to the commencement of commercial operations.

For the reasons and discussions set forth above, and upon considering the relevant legal provisions, we are of the view that we find no merit in the applicant's contention.

Accordingly, the question formulated in the income tax reference application is answered in the affirmative that is, against the applicant-assessee and in favour of the respondent.

Accordingly, the income tax reference application fails.

However, there shall be no order as to costs.

The Registrar, High Court Division of Supreme Court of Bangladesh, is hereby directed to take necessary steps under 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