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

INCOME TAX REFERENCE APPLICATION NO. 316 OF 2018

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

In the matter of:
BBC Bangladesh Limited.

…….Applicant

-V E R S U S -
The Commissioner of Taxes, Taxes Zone-8, Dhaka.

.......Respondent.

Mr. M. Saquibuzzaman, Advocate with
Mr. Kazi Ershadul Alam, Advocate with
Mr. Ragib Kabir, Advocate

.... For the applicant

Mr. Akhtar Farhad Zaman, D.A.G. with
Ms. Shadia Afrin Shapla, D.A.G. with
Mr. Arif Khan, D.A.G. with
Mr. Sovan Mahmud, A. A. G.
Mr. Md. Faridul Islam, A. A. G. and
Mr. Md. Nazmul Haque, A. A. G.

……... For the respondent.

Heard on 21.05.2026 & Judgment on 11.06.2026

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. 2449 of 2017-2018 (Assessment Year 2014-15) dated

28.02.2018 which was communicated to the applicant on 16.04.2018 disallowing the applicant's appeal against the order dated 31.07.2017 passed by the Commissioner of Taxes (Appeals), Taxes Appeal Zone-1, Dhaka [in short, the CT(A)] in the First Appeal No. 852/Circle-156/T.Z.-8/16-17 against the assessment order dated 29.06.2016 passed by the Deputy Commissioner of Taxes, Tax Circle-156, Tax Zone-8, Dhaka (in short, the DCT).

Facts, 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 and it is the local office of the world renowned news outlet which has its head office in United Kingdom. The applicant-company earns through gathering and broadcasting of news and an income tax payer bearing TIN-197458101877. The applicant submitted its income tax return for the assessment year 2014-2015 showing net loss of Tk.7,19,24,092/- which was assessed by the DCT on 29.06.2016 under section 93/83(2) of the Ordinance assessing loss of Tk. 55,43,024/-(Net loss taka fifty five lac forty three thousand and twenty four) and no tax was demanded.

Challenging the said assessment order passed by the DCT, the applicant preferred an appeal before the CT(A) on the following two grounds:

(1) That the DCT disallowed Tk.1,30,11,994/- on different heads of profit and loss account and ultimately treated that amount as income.

(2) That the DCT considered as well as accepted addition of share money deposit of Tk.5,29,08,700/- as share equity in

examination of balance sheet but at the same time that amount was treated by him as business receipt which was received as foreign remittance against equity investment in the applicant company.

The CT(A) after hearing the applicant-assessee, confirmed the order of the DCT by his order dated 31.07.2017.

Being aggrieved by and dissatisfied with the appeal order dated 31.07.2017, the applicant preferred an appeal (second appeal) being I.T.A. No. 2449 of 2017-2018 before the Tribunal. Thereafter, the Tribunal after hearing the parties passed an order dated 28.02.2018 where the Tribunal did not interfere with the order of the CT(A) and the same was upheld.

In the facts and the circumstances of the case, the assessee-applicant filed the instant reference application before this Court under section 160(1) of the Ordinance for answering the following questions:

I) Whether under the facts and circumstances of the case the Tribunal was justified in upholding the order of the CT(A) so as to uphold disallowance of Tk.1,30,11,994/- from the different heads of profit and loss account which was allowable expenses under section 29 of the Ordinance as well as holding Tk.5,29,08,700/- as business income/ receipt in violation of section 28 of the Ordinance since the said money is foreign remittance received as equity injection;

II) Whether under the facts and circumstances of the case the Tribunal was justified in upholding the order of the CT(A) through its non-speaking order upholding DCT's disallowance of Tk.1,30,11,994/- from the heads of allowable expenses;

III) Whether under the facts and circumstances of the case, the Tribunal was justified in upholding the order of the CT(A) through its non-speaking order upholding DCT's inclusion of Tk.5,29,08,700/- received by the applicant as foreign remittance on share money deposit for equity injection as business income in violation of the provisions of the Ordinance;

IV) Whether in view of section 28 of the Ordinance and on the facts and circumstances of the case the Tribunal was justified in upholding the order of the CT(A) upholding the addition of Tk. 5,29,08,700/- to the total income of the applicant as business income.

The learned Counsel for the applicant submits that although the applicant filed the reference application formulating the above questions, if question No. (I) is answered then the other questions formulated in the reference application will automatically get its result.

Mr. Kazi Ershadul Alam, the learned Counsel appearing for the applicant, took us through the order passed by the income tax authority. In this regard Mr. Alam submits that the Tribunal's decision to disallow Tk.1,30,11,994/- from various heads of the profit and loss account is absolutely whimsical, non-speaking, and arbitrary. Learned Counsel contends that the method of accounting was employed in accordance with section 35 of the Ordinance and that the statement of accounts comprising the profit and loss account and balance sheet was duly certified by a Chartered Accountant. Furthermore, bank statements and relevant supporting documents were produced, all of which confirm that these are allowable expenses under section 29 of the Ordinance. Despite this, the authorities disallowed the expenses without specifying or pinpointing any lack of supporting document.

Mr. Alam further argues that the Tribunal merely upheld the findings of the CT(A) and the DCT without providing any cogent reasons for its decision. Therefore, as a non-speaking order, the decision is liable to be set aside.

Mr. Alam next submits that the order passed by the Tribunal confirming the order of the CT(A) to uphold the addition of Tk. 5,29,08,700/- to the total income/receipt of the applicant as business income, is arbitrary and unlawful, in the regard Mr. Alam contends that section 28 of the Ordinance provides a list of income classified as 'income from business or profession' which does not include money received as an equity injection.

Mr. Alam then argues that the Tribunal committed an error of both law and fact by failing to appreciate that under section 19 or any other provision of the Ordinance, there is no scope to treat equity contributions from share holders as business income/receipt. Moreover, the DCT accepted the said remittance of Tk.5,29,08,700/- as an equity contribution in the assessment order after examining and verifying the balance sheet with supporting documents. Therefore, the Tribunal's decision is illegal and violates the applicable provisions of the Ordinance; as such, the order is liable to be set aside for the ends of justice.

Ms. Shadia Afrin Shapla, learned Deputy Attorney-General appearing on behalf of the respondent-Government by referring to the decision in the case of 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 mandate upon the taxes authority to accept without question accounts audited by a Certified or Chartered Accountant. The requirement of law is that the income tax officer is to compute the profits upon such basis and in such manner as he may determine. Learned DAG further fortified her submission by reference to the decision in the case of Eskayef Bangladesh Ltd. -vs- Commissioner of Taxes, reported in 58 DLR (HCD) 531, where it was held that

> "merely because a particular method of accounting was followed and was audited by a Chartered Accountant firm the same cannot be said to be sacrosanct when the expenditures were not verifiable".

Learned DAG further submits that the order passed by the Tribunal, confirming the order of the CT(A) to uphold the addition of Tk.5,29,08,700/-under section 28 to the total income/receipt of the applicant as business income is fair, lawful and justified in accordance with the provision of the Ordinance. The applicant-assessee misinterpreted the provision of law. The said amount is remittance income of the applicant, not the equity contribution. That's why the said amount was taken as business receipt/income under section 28 of the Ordinance.

Learned DAG finally goes to argue that the grounds in reference application are defective, misleading and misconceived and not tenable in the eye of law and the questions raised in the reference application is liable to be answered in the form of affirmative i,e. against the applicant and in favour of the taxes department.

We have considered the submissions of the learned Advocate for the applicant and the learned Deputy Attorney General for the respondent-Government and perused the reference application, supplementary affidavit filed on behalf of the applicant, 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 audited statement of accounts, as the accounts had been audited by a firm of Chartered Accountants, that should have been accepted in the absence of any objection or finding under section 35(4)(a) or (b) of the Ordinance.

To have a clear idea with regard to the legal implication of the provision of section 35 of the Ordinance, on the impugned action, we feel it expedient to reproduce that section here, applicable for the assessment year 2014-2015, for ready reference which runs as follows:

"35. Method of accounting.-

(1) All income classifiable under the head "Agricultural income", "Income from business or profession'' or "Income from other sources" shall be computed in accordance with the method of accounting regularly employed by the assessee.

(2) Notwithstanding anything contained in sub-section (1), the Board may, in the case of any business or profession, or class of business or profession, or any other source of income, or any class of persons or class of income, by a general or special order, direct that the accounts and other documents shall be maintained in such manner and form, and that payments of commercial transactions recorded in such manner, as may be prescribed or as may be specified in such direction; and thereupon the income of the assessee shall be computed on the basis of the accounts maintained, payments made and transactions recorded accordingly.

(3) Without prejudice to the preceding sub-sections, every public or private company as defined in the Companies Act, 1913 (VII of 1913) or কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নং আইন), shall, with the return of income required to be filed under this Ordinance for any income year, furnish a copy of the trading account, profit and loss account and the balance sheet in respect of that income year certified by a chartered accountant

(4) Where —

(a) no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Deputy Commissioner of Taxes, the income of the assessee cannot be properly deduced therefrom; or

(b) in any case to which sub-section (2) applies, the assessee fails to maintain accounts, make payments or record transactions in the manner directed under that sub-section; or

(c) a company has not complied with the requirements of sub- section (3);

the income of the assessee shall be computed on such basis and in such manner as the Deputy Commissioner of Taxes may think fit.

On a plain reading of the quoted provision of section 35 of the Ordinance, we find that the DCT is indeed empowered to reject an assessee's accounts. The power of the DCT to disallow 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 claims made by the applicant were not accepted because supporting evidence were not submitted. It transpires from the materials on record that the disallowances made by the DCT were based on the fact that the claims were not verifiable through supporting documents. This is not a question of the acceptability of the accounting system itself, but rather a failure by the assessee-applicant to provide evidence supporting claims for allowances and deductions.

The learned Counsel appearing for the applicant emphasized that the accounts presented to the tax authorities had been audited by a Chartered Accountant and, therefore, could not be questioned. We find such a submission unacceptable. Even accounts audited by a Chartered Accountant must be supported by primary evidence.

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

It is to be noted here that when the DCT, in disallowing certain claims, noted that they were unacceptable due to the assessee-applicant's failure to provide details and evidence, it became incumbent upon the applicant to produce the requisite documentation. The reasons provided for rejecting the claims served as sufficient notice to the applicant to furnish supporting evidence.

Upon perusing the record, it is clear that the CT(A), in its appeal order dated 31.07.2017, rightly upheld the disallowances from the profit and loss accounts made by the DCT in its assessment order. Thereafter, considering the facts and circumstances of the case, the Tribunal maintained the order of the CT(A), holding the view that the disallowances under several heads of expenses in the profit and loss accounts as confirmed by the learned CT(A), for the reasons assigned in his order, are found to be fair and reasonable. However, from the order of the Tribunal, we do not find that the applicant produced any such evidence, even at the appellate stage. 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 disallowances of claimed expenses are purely factual matters involving no complex question of law. In this regard, we find the tax authority's calculation to be tenable. We are of the view that we should not disturb the factual findings legally settled by the Tribunal.

In the case of Commissioner of Taxes -vs- Conference and Exhibition Management Service Ltd. reported in 25 BLC (AD) 15, held that,

> "When the tax authority indicates that any claims are disallowed on account of lack of verifiable evidence, it is incumbent upon the assessee to satisfy the tax authority by providing necessary supporting evidence. The provision in section 35(3) of the Ordinance, does not exonerate the assessee from supplying evidence in support of the claims for allowances/deductions."

It is our view that while section 35(3) of the Ordinance directs the applicant to furnish a trading account, a profit and loss account, and a balance sheet certified by a Chartered Accountant, such certification does not dispense with the requirement to produce evidence in support of the claims made therein.

For the reasons and discussions set forth above, and upon considering the relevant legal provisions and judicial precedents regarding the disallowance of expenses, we find no merit in the applicant's contention.

The applicant disclosed share capital (share money deposit) Tk. 3,88,59,850/- as on 31 March, 2013 and Tk.9,17,68,550/- as on 31 March, 2014 in its balance sheet, that is an increase of share money deposit of Tk.5,29,08,700/- which was reflected in the statement of accounts audited by a Chartered Accountant's firm namely M. Z. Islam & Co. for the assessment year 2014-2015 and submitted income tax return which was assessed by the DCT under section 93/83(2) of the Ordinance. In its profit and loss account, the applicant declared revenue (receipt/income) of Tk. 3,16,197/- under section 28 of the Ordinance. But at the time of assessment, the DCT assessed revenue (receipt/ income) total Tk.5,32,24,897/- in place of Tk.3,16,197/- as under:

আয়ের উৎসঃ ব্যবসা হইতে আয় (সংবাদ পরিবেশনের মাধ্যমে আয় প্রাপ্তি) করদাতা কোম্পানীর ২০১৪-২০১৫ করবর্ষে প্রাপ্তি ও খরচ নিম্নরুপভাবে পর্যালোচনা করা হলোঃ

এস এস এল টেক লিঃ হতে প্রাপ্তি	টাঃ ১,৭৮,৯৮২/-
এস এস ডি ওয়্যারলেস হতে প্রাপ্তি	টাঃ ১,৩৭,২১৫/-
বৈদেশিক অর্থ প্রাপ্তি-	টাঃ ৫,২৯,০৮,৭০০/-
আয়	টাঃ ৫,৩২,২৪,৮৯৭/-

The DCT without specifying any reason in a slip short manner assessed বৈদেশিক অর্থ প্রাপ্তি টাঃ ৫,২৯,০৮,৭০০/- on its income.

To have a clear idea with regard to the legal implication of the definitions of 'business' and 'income' under clauses (14) and (34) of section 2 and provisions of section 28 of the Ordinance, we feel it expedient to reproduce those provisions here 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 share holder;

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 its members;

(c) value of any benefit or perquisite, whether convertible into money or not, arising from 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 Shilpa Bank, Bangladesh Shilpa Rin Sangstha, 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 its profit and loss account for that year or, as the case may be, in which it is actually received, whichever is earlier.

On a plain reading of the definitions of 'business' and 'income' and provisions of section 28 of the Ordinance, we find no statutory basis to add foreign remittances received as share money deposit to an assessee's revenue or income. Furthermore, the DCT provided no explanation or legal reasoning in the assessment order for treating the foreign remittance received for share money equity of Tk.5,29,08,700/- as business income (revenue/receipt) under section 28 of the Ordinance.

On the other hand, at the time of assessment, the DCT examined the balance sheet and considered the previous share equity of Tk.3,88,59,850/- and the subsequent increase in share money equity of Tk. 5,29,08,700/-, totaling Tk. 9,17,68,550/-, in the following manner:

<u>স্থিতিপত্র পর্যালোচনা ঃ</u>

১। স্থিতিপত্র পর্যালোচনা করা হলো। পর্যালোচনায় দেখা যায় যে, শেয়ার ইকুইটি প্রদর্শণ করা হয়েছে টাঃ ৯,১৭,৬৮,৫৫০/-। পূর্ববর্তী করবর্ষে শেয়ার ইকুইটি ছিল টাঃ

৩,৮৮,৫৯,৮৫০/-। বিবেচ্য করবর্ষে শেয়ার মানি ইকুইটি বৃদ্ধি পেয়েছে টাঃ ৫,২৯,০৮,৭০০/-। করদাতা কোম্পানী প্রদর্শিত ইকুইটি শেয়ারের সমর্থনে এনক্যাশমেন্ট সার্টিফিকেট এর কপি ও ব্যাংক বিবরণী দাখিল করেন যা পর্যালোচনা করা হলো। পর্যালোচনায় প্রদর্শিত শেয়ার ইকুইটির বিষয়টি মেনে নেওয়া হলো।

The appeal order was passed by the CT(A) in Appeal No. 852/Circle-156/Taxes Zone-8/2016-17, dated 31.07.2017 wherein the assessment order of the DCT was upheld in a slipshod manner as follows:

> “**৩ নং আপত্তি ঃ** বৈদেশিক অর্থ প্রাপ্তি ৫,২৯,০৮,৭০০/= টাকাকে আয় হিসাবে বিবেচনা করার বিরূদ্ধে।
> আয়কর নথি পর্যালোচনায় দেখা যায় করদাতা-কোম্পানী সংবাদ পরিবেশন করে আয় প্রাপ্ত হয়। আলোচ্য করবর্ষে করদাতা কোম্পানী বৈদেশিক অর্থ প্রাপ্তি ৫,২৯,০৮,৭০০/= টাকাকে আয় হিসাবে বিবেচনা করেছেন। আয়কর নথি পর্যালোচনায় বিদেশ হতে প্রাপ্ত অর্থকে আয় হিসাবে গণ্য করার কার্যক্রম যথাযথ প্রতীয়মান হওয়ায় বহাল রাখা হলো।”

Thereafter, the appeal (second appeal) order was passed by the Tribunal in I. T. A. No.2449 of 2017-2018, dated 28.02.2018 wherein the appeal (first appeal) order of the CT(A) was upheld as follows:

> “We have heard both the sides, perused the records and gone through the order of the authorities discussed above. At the time of hearing before tribunal learned A.R. could not produce any evidence to controvert the order of learned C.T. (Appeals). So, considering the facts and circumstances of the case, we are of the view that the decision of the learned C.T. (Appeals) regarding receipts was just and proper. 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 for the assessment year fails."

We have perused the provisions of sub-sections (2) and (4) of section 19, under which an investment may be treated as income and subsequently classified under the head 'Income from other sources.' For the sake of clarity, the relevant provisions of section 19 of the Ordinance are quoted herein below:

19. Un-explained investments, etc., deemed to be income. —

19(2) Where, in any income year, the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article and the Deputy Commissioner of Taxes finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income and the assessee offers no explanation about the excess amount or the explanation offered is not, in the opinion of the Deputy Commissioner of Taxes, satisfactory, the excess amount shall be deemed to be the income of the assessee for such income year classifiable under the head "Income from other sources".

19(4) Where, in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of fund for the investments, or the explanation offered is not, in the opinion of the Deputy Commissioner of Taxes, satisfactory, the value of the investments shall be deemed to be the income of the assessee for such financial year classifiable under the head "Income from other sources".

We have minutely examined the provisions of sub-sections (15), (16), (18), (20) and (23) of section 19 of the Ordinance also. A plain reading of the aforementioned provisions reveals that where an excess investment is found, or where an investment has been made and that is not recorded in the books of accounts, and the assessee offers no explanation regarding the nature and source of the funds or the explanation offered is unsatisfactory the excess value or the value of the investment, as the case may be, shall be deemed to be the income of the assessee for that financial year, classifiable under the head 'Income from other sources.' We find no provision of law that allows for the determination of foreign currency invested as a 'share money deposit' as income under section 28 of the Ordinance.

In the instant case, the applicant invested foreign currency as a share money deposit and produced bank statements, remittance papers, and other relevant documents. These were examined and accepted by the DCT in the assessment order while evaluating the balance sheet, however, the DCT treated the same amount as revenue (receipt/income) in the profit and loss account without any lawful justification. Both the lower appellate authorities failed to apply their judicial minds. While the Tribunal is competent to decide all questions of fact and law and serves as the final arbiter of factual matters, the legal aspects were entirely ignored. Furthermore, the first appellate order of the CT(A) is highly unsatisfactory and does not constitute a speaking order.

For the reasons and discussions set forth above, and considering the facts and relevant legal provisions, we are of the view that the Income Tax Authority acted beyond the scope of the law. Accordingly, we find merit in the last part of the reference application.

Therefore, it is ordered that the question formulated in the income tax reference application, the first part is answered in the affirmative that is, against the applicant-assessee and in favour of the respondent and the last part is answered in the negative that is, against the respondent and in favour of the applicant-assessee.

Accordingly, the income tax reference application succeeds in part.

However, there shall be no order as to costs.

The Registrar, High Court Division of Supreme Court of Bangladesh is directed to take 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