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

INCOME TAX REFERENCE APPLICATION NO.123 OF 2019
INCOME TAX REFERENCE APPLICATION NO.124 OF 2019
and
INCOME TAX REFERENCE APPLICATION NO.125 OF 2019

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

In the matter of:
The Commissioner of Taxes, Taxes Zone-1, Chattagram.
…….Applicant.
-V E R S U S -
Confidence Cement Ltd., Chattagram
.......Respondent.

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 Applicant.

Mr. M. A. Hannan, Senior Advocate with
Mr. Royhan Kabir, Advocate
……... For the Respondent.

Heard on 14.05.2026 & Judgment on 20.05.2026

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

Dihider Masum Kabir J:

Since the parties in all these reference applications are identical, and because the questions formulated for answering 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.

All these three reference applications have been filed against the order dated 09.09.2018 passed by the Taxes Appellate Tribunal, Division Bench, Chittagong (in short, the Tribunal) in ITA No.6933 of 2017-2018 for the assessment year 2016-2017 (01.01.2015 to 31.12.2015) (Reference Application No.123 of 2019), in ITA No.6932 of 2017-2018 for the assessment year 2015-2016 (01.01.2014 to 31.12.2014) (Reference Application No.124 of 2019) and in ITA No.6934 of 2017-2018 for the assessment year 2016-2017 (01.01.2016 to 30.06.2016, 06 months) (Reference Application No.125 of 2019) allowing the appeals in part.

Facts, relevant for the disposal of these reference applications, in short, are that the respondent-assessee derives income from manufacturing and sale/supply of cement, bank interest and other sources. Being the assessee, the respondent filed the income tax return (in short, the return) with audited statement of accounts for the assessment years 2016-2017 (01.01.2015 to 31.12.2015), 2015-2016 (01.01.2014 to 31.12.2014) and 2016-2017 (01.01.2016 to 30.06.2016) with the Taxes Department, Circle-07 (Companies), Taxes Zone-01, Chittagong showing total income Tk.3,84,35,594/-, Tk.40,16,03,399/- and Tk.25,41,94,384/- respectively. Subsequently, the Deputy Commissioner of Taxes (in short, the DCT) issued notices upon the respondent-assessee under sections 83(1) and 79 of the Income Tax Ordinance, 1984 (in short, the Ordinance). Accordingly, the assessee appeared before the DCT with all relevant papers and documents. After hearing, the DCT completed the assessment under sections 83(2)/82C, 82BB(1)/82BB(3)83(2)/82C and 83(2)/82C determining a total income of Tk.47,70,82,306/-, 51,29,45,561/- and 26,48,52,898/- respectively which consisted of business income and income from other sources for the assessment years under consideration. While making the assessments regarding business income, the DCT partly disallowed different heads of expenditures as claimed by the assessee in the profit and loss account and estimated sales and gross profit in trading account. The DCT further classified business income into categories, namely income from local sales through dealer, income from local sale without dealer, income from export sales and income from supplies on which tax has been deducted at source under section 52 of the Ordinance and rule-16 of the Income Tax Rules, 1984 (in short, the Rules) which falls under the criteria of assessment of section 82C of the Ordinance.

Being aggrieved by the said orders of the DCT, the respondent-assessee preferred appeals before the Commissioner of Taxes (Appeals), Taxes Appeal Zone, Chittagong [in short, CT(A)] being Income Tax Appeal Nos.13/Circle-7 (Companies)/TZ-01/2017-2018, 03/Circle-7 (Companies)/TZ-01/2017-2018 and 14/Circle-7 (Companies)/TZ-01/ 2017-2018 respectively challenging the part of assessment whereby, classifying the business income, the supply of cement from which tax has been deducted under section 52 was assessed in accordance with section 82C of the Ordinance. The assesse-respondent also challenged the arbitrary disallowances, the estimation of sales and gross profit and the resulting additions made in the assessment order. The CT(A) affirmed that part of assessment made section 82C of the Ordinance, and also affirmed the disallowances from different heads of profit and loss account, except reducing travelling expenses from Tk.25,00,000/- to

Tk.15,00,000/- for the assessment year 2015-2016, on the ground that disallowances seemed just and fair. However, upon considering the facts and circumstances of the case and perusing the record, the CT(A) reduced the estimated sales on the ground that the estimation of sales made by the DCT seemed excessive comparing with past record of the case and affirmed the estimated rate of gross profit.

Being aggrieved by and dissatisfied with the said orders of the CT(A), the respondent as appellant filed three separate appeals before the Tribunal being ITA No.6933, 6932 and 6934 of 2017-2018 for the above assessment years respectively. The Tribunal by its order dated 09-09-2018 disposed of these appeals by allowing the same in part. In its orders, the Tribunal directed the DCT to assess income of the assessee-company under section 83(2) instead of section 82C of the Ordinance. Furthermore, the Tribunal reduced/deleted some disallowances from different heads of profit and loss account and also reduced the estimated sales on the ground that disallowances and estimations made by the DCT as well as the CT(A) seemed excessive and irrationally high comparing with past record of the case, as such, it reduced the additions made in the assessment order and decreased total income.

Against the said orders of the Tribunal, these reference applications have been filed by the Commissioner of Taxes, Taxes Zone-1, Chittagong (in short, the CT) before this Court under section 160(1) of the Ordinance for answering three questions in every reference application. All the questions are identical across the applications. In reference application No.123 of 2019 the following three questions have been formulated for answering:

i) Whether on the facts and in the circumstances of the case the Tribunal was legally justified in directing the DCT to assess income of the assessee company under section 83(2) instead of section 82C of the Ordinance?

ii) Whether on the facts and in the circumstances of the case the Tribunal was legally justified in reducing/ deleting the following disallowances when the assessee company failed to submit corroborative evidences of its claim and also failed to deduct tax at source and make payment by cross cheque or bank transfer thereby violating section 30(aa) & 30(m) of the Ordinance?

iii) Whether on the facts and in the circumstances of the case the Tribunal was legally justified in directing the DCT to estimate sales at Tk.380,00,00,000/- in place of Tk.450,00,00,000/- thereby violating sections 79 & 35 of the Ordinance?

Ms. Shadia Afrin Shapla, the learned Deputy Attorney General appearing for the applicant submits that if the question Nos. (i), (ii) and (iii) of reference application No.123 of 2019 (Assessment year 2016-2017) covering the period of income from 01.01.2015 to 31.12.2015 (12 months) are answered, the questions formulated in the reference application Nos.124 and 125 will automatically be resolved.

The learned Deputy Attorney General submits that the Tribunal failed to apply its judicial mind in directing the DCT to make the assessment under section 83(2) instead of 82C of the ordinance relating to the assessee's income derived from the supply of cement from which tax has been deducted at source under section 52 read with rule-16 of the Rules, at the time of receipt against supply. Because this income falls under the assessment criteria of section 82C (minimum tax under the Finance Act, 2016) of the Ordinance, she contends that by giving such a direction upon the DCT, the Tribunal failed to properly appreciate the statutory provisions enacted by the Parliament.

The learned DAG further submits that the Tribunal failed to appreciate the facts and circumstances of the case, pointing out that the reasoning of the disallowances under different heads was elaborately discussed by the DCT in the assessment order and appears to be highly reasonable, just and proper. Conversely the assesse-company failed to submit the relevant papers and documents, thereby violating section 79 of the Ordinance and also failed to deduct tax at source and make payment by cross cheque or bank transfer in violation of section 30(aa) & 30(m) of the Ordinance. Consequently, the order passed by the Tribunal reducing the disallowances under different heads of the profit & loss account as well as reducing the estimation of sales is not legally justified. Learned DAG argues that the Tribunal, without assigning any lawful reason directed the DCT to estimate sales at Tk.380,00,00,000/- instead of Tk.450,00,00,000/- thereby violating section 35 of the Ordinance whether the sales estimated by the DCT appears to be legally justified.

Finally, the learned DAG submits that the respondent's replies to the reference applications are defective, misleading, and misconceived, and are entirely untenable in the eyes of the law. Therefore, she concludes that the questions raised in the reference applications ought to be answered in the negative and in favor of the applicant-Taxes Department.

Mr. M.A. Hannan, the learned Senior Counsel appearing on behalf of the respondent-assessee submits that the respondent-company is not a commercial trader/supplier rather it is engaged in manufacturing process of which raw materials are imported and advance income tax (in short, AIT) has been deducted at the import stage under section 53 and at the time of selling goods AIT also has been deducted. This selling of goods does not amount to supply as like as commercial trader who supplies goods on tender. Therefore, the Tribunal has correctly on proper construction of facts and law arrived on findings to the effect that,

> "We have found solid ground in the argument of the Ld.AR. The said clause of the proviso of the section 82C clearly keeps tax deducted at source from industrial undertakings who import raw material for own consumption out of considering the same as minimum tax."

Therefore, the Tribunal has rightly decided that the income of the respondent derived from supply of cement is to be assessed under section 83(2) instead of section 82C of the Ordinance. It is stated herein that applying section 82C on supply sale Tk.7,77,28,176.00 having been added with income most illegally as supply of Tk.2,25,11,564.00 income has already been included in net profit of Tk.36,82,02,072.00 as accepted by DCT on audited accounts of profit & loss accounts in paragraph 1, so it shall be added twice with income causing double tax on the same tax base to the extent of Tk.2,25,11,564.00 which need to be deleted for ends of justice.

Mr. Hannan also submits that the assessee maintained a mercantile system of accounting under section 35(3) of the Ordinance and filed return with audited accounts certified by the Chartered Accountant. It should be accepted as correct in absence of any objection or finding under section 35(4)(a)(b) of the Ordinance. The tax authority may call for evidences to satisfy itself about the claimed expenditures and such evidences have already been shown and decision has already been given by the Tribunal. This matter is well decided by the Appellate Division in Commissioner of Taxes –vs- Conference and Exhibition Management Service Ltd, 25 BLC (AD) (2020), pp.14-18 and in this case it is observed that,

"....section 35(3) of the Ordinance indeed directs the assessee to furnish a copy of the trading account, profit and loss account and the balance sheet of the income year certified by a Chartered Accountant, but that does not obviate the requirement to provide evidence in support of the claims made by the assessee. We reiterate the finding of the High Court Division in the decision reported in 58 DLR 531 that accounts audited by a firm of Chartered Accountants cannot be said to be sacrosanct. 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, 1984 does not exonerate the assessee from supplying evidence in support of the claims for allowances/deductions".

In the instant case the Tribunal took decision on the disallowances after perusing all the supporting evidences supplied by the assessee. As such there is no scope to interfere in the decision of the Tribunal except to pass an order to accept all expenditures as reflected in the audited report certified by the Chartered Accountant and submitted with the return under section 35 of the Ordinance as no case having been made out by the DCT under sub-section 4 of section 35 rather he acknowledged that income has been properly deduced from such audited accounts in assessment just taking net profit of Tk.36,82,02,072.00 as show in such profit & loss accounts in paragraph 1 in assessment order. But still all the expenditures as reflected in the audited report certified by the Chartered Accountant and submitted with the return were the real and correct expenditures made by the respondent-assessee during the income year. Only because of the judicial pronouncement and the orders usually and customarily passed in the applicable field, now the respondent might not have efficacious remedy available on disallowances made by the DCT, the CT(A), the Tribunal and thereon by this Court and lastly by the Hon'ble Appellate Division in respect of each and every assessment year. As such it is now inevitable and practically impossible to ventilate these grievances on each and every disallowances as usually made by the DCT, the CT(A), the Tribunal without any evidences as lawfully obtained like inspection report or audit report after being selected for audit or audit report by the Chartered Accountant or any other report or data or statement submitted before other public authorities under the statutory framework. Therefore, the respondent had not come under reference before this Court raising question on disallowances of several heads of profit & loss accounts and administrative expenses.

Mr. Hannan lastly submits that the sales of company do not increase overnight, for which production has to be increased. It is definitely related with the production capacity of the plant as set up, import and use of raw materials herein cement clinker main raw material which is always on import and the power and energy namely gas and electricity to be consumed only from the public sector companies as required for such production. If the production is increased then only sales may increase. But to increase production use of raw materials, gas, power and other instruments has to be also increased simultaneously. In the Tribunal order it is stated that in the assessment year bills of gas and power has been increased by 3.31% and use of raw materials has been increased by 4.26% and the assessee has declared increase sales by 4.41% which is proportionately though not consistent but the respondent has accepted the same as not filed any reference before this Court. He finally submits that these three questions are to be answered in the form of affirmative and in favour of the assessee.

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

Question No. (i), as formulated by the applicant-the CT, challenges the order of the Tribunal regarding the respondent’s business income. The Tribunal directed that this income be assessed under section 83(2) instead of section 82C, and further directed the DCT to make a fresh assessment under section 83(2)/84 instead of section 83(2)/82C of the Ordinance. The learned DAG, on behalf of the applicant, claims that the DCT correctly assessed the business income under section 82C of the Ordinance, as it was derived from the supply of cement from which tax has been deducted at source under section 52 of the Ordinance, read with Rule 16 of the Rules. Conversely, the learned Senior Counsel for the respondent submits that the respondent-company is not a commercial trader or supplier; rather, it is engaged in a manufacturing process for which raw materials are imported and AIT is deducted at the import stage under section 53, with AIT also being deducted at the time of sale. He contends that this sale of manufactured goods does not amount to a "supply" in the manner of a commercial trader who supplies goods vide public tender. Therefore, the respondent argues that the Tribunal rightly decided that the income derived from the sale of cement should be assessed under section 83(2) instead of section 82C of the Ordinance.

For clarity and a better understanding of the matter, the relevant portion of the assessment regarding the classification of business income made by the DCT is quoted below for ready reference:

<u>ব্যবসা আয়ের বিভাজন ঃ</u>

করদাতা কোম্পানী প্রদর্শিত বিক্রয়ের আনুপাতিক হার যথাক্রমে স্থানীয় বিক্রয় ৭৯.২১%, ডিলার ব্যতীত স্থানীয় বিক্রয় (ব্যক্তি) ০.৩৪%, বিভিন্ন প্রতিষ্ঠানে সরবরাহ বিক্রয় (কর্পোরেট) ১৭.৮২% ও রপ্তানী বিক্রয় ২.৬৩%। সেই হিসাবে ব্যবসা আয়ের আনুপাতিক বিভাজন নিম্নরূপঃ

(ক) ডিলারের মাধ্যমে স্থানীয় বিক্রয় হইতে আনুপাতিক ৭৯.২১%

হারে নীট আয় টাঃ ৩৪,৫৫,০২,১৭৯/-

(খ) ডিলার ব্যতীত স্থানীয় বিক্রয় (ব্যক্তি) হইতে আনুপাতিক ০.৩৪%

হারে নীট আয় টাঃ ১৪,৮৩,০২৯/-

(গ) সরবরাহ বিক্রয় হইতে আনুপাতিক ১৭.৮২% হারে নীট

আয় ৭,৭৭,২৮,১৭৬/- টাকা। কিন্তু উৎসে কর্তিত ১,৩৮,০৪,১৫৩/-

টাকার উপর ৮২সি ধারায় আনুপাতিক হারে মোট আয় আসে টাঃ ৫,৫২,১৬,৬১২/-

(ঘ) রপ্তানী বিক্রয় হইতে আনুপাতিক ২.৬৩%

হারে নীট আয় টাঃ ১,১৪,৭১,৬৬৭/-

বাদঃ রপ্তানী রেয়াত।

আয়কর অধ্যাদেশ, ১৯৮৪ এর ৬ষ্ঠ তপশীলের

পার্ট-এ অনুচ্ছেদ ২৮ অনুযায়ী রেয়াত ৫০%

প্রদান করা হইল ------------ টাঃ ৫৭,৩৫,৮৩৩/-

সিমেন্ট রপ্তানী খাতে রেয়াত ব্যতীত নীট আয় টাঃ ৫৭,৩৫,৮৩৪/-

টাঃ ৪০,৭৯,৩৭,৬৫৪/-

ঙ) সরবরাহ বিক্রয় খাতে ৮২সি (৬) ধারার আয় ঃ

সরবরাহ বিক্রয় হইতে আনুপাতিক ১৭ হারে নীট আয় ৭,৭৭,২৮,১৭৬/- টাকা। কিন্তু উৎসে কর্তিত ১,৩৮,০৪,১৫৩/-টাকার বিপরীতে ৮২সি ধারার আয় নিরূপন করা হইয়াছে ৫,৫২,১৬,৬১২/- টাকা। কিন্তু বিবেচ্য করবর্ষে সরবরাহ বিক্রয় খাতে নিরূপিত আয় অপেক্ষায় ৮২সি ধারার আয় কম (৭,৭৭,২৮,১৭৬-৫,৫২,১৬,৬১২)= ২,২৪,৫১,৯৮৫/- টাকা। সুতরাং আয়কর অধ্যাদেশ ১৯৮৪ এর ৮২সি (৬) ধারায় আয়

নিরূপন করা হইল টাঃ ২,২৫,১১,৫৬৪/-

ব্যবসা মোট আয়ঃ টাঃ ৪৩,০৪,৪৯,২১৮/-

Upon the filing of an appeal by the assessee-company, the CT(A) passed an order dated 22.01.2018 in Appeal No. 13/Circle-

07(Companies)/Taxes Zone-1/2017-2018, upholding the assessment order of the DCT in the following manner:

<u>আপীল এর সিদ্ধান্ত :</u>

আপত্তি নং-০১: আয়কর অধ্যাদেশ, ১৯৮৪ এর ৮২সি ধারায় আয় নিরুপণের বিরুদ্ধে এ আপত্তি উত্থাপিত।

আপত্তির আলোকে নথির সার্বিক রেকর্ড পরীক্ষান্তে দেখা যাচ্ছে যে করদাতার সামগ্রিক বিক্রয় স্থানীয়, সরবরাহ ও রপ্তানী উপ-শিরোনামে বিভক্ত। বিবেচ্য করবর্ষে সরবরাহ খাতে বিক্রয় প্রদর্শন করা হয় টাঃ ৭১,৪৫,৯২,১৩৫/-। উক্ত সরবরাহের বিপরীতে উৎসে কর কর্তন দাবী করা হয় টাঃ ১,৩৮,০৪,১৫৩/-। উৎসে করের ভিত্তিতে উপকর কমিশনার আলোচ্য খাতের আয় ৮২সি ধারায় নিরুপন করেন।

উপকর কমিশনার কর্তৃক প্রযুক্ত সিদ্ধান্ত যৌক্তিক ও আইনানুগ মর্মে প্রতীয়মান হয় বিধায় উক্ত সিদ্ধান্ত বহাল রাখা হলো।

Thereafter, upon filing of a second appeal by the assessee-company, the Tribunal passed its order in I.T.A. No.6933 of 2017-2018 dated 09.09.2018 which is reproduced below for ready reference:

> "After hearing both parties and examining the clause (ii) of the proviso of the section 82 (C) of ITO 1984 (which has replaced the previous section 82 (C) by the finance act 2016). We have found solid ground in the argument of the Ld. AR. The said clause of the proviso of the section 82 (C) clearly keeps tax deducted at source from industrial undertakings who import raw materials for own consumption out of considering the same as minimum tax. So, the DCT at very beginning made a vital mistake by considering the tax deducted at source from the appellant as minimum tax. Later on, the same mistake has been committed by the Ld. CTA.

Considering this very fact of (clause ii of the provision of section 82(C) of ITO 1984) we vacate the order of the Ld. CTA and order the DCT to make the assessment freshly purely under section 83(2)/84 of ITO 1984 and not to calculate the tax deducted at source from the appellant as minimum tax as per section 82(C) of the same ordinance."

Upon receiving the aforementioned order passed by the Tribunal, the CT formulated this question for answering by filing a reference application before this Division.

On perusal of the record, we find that the respondent carries on the business of manufacturing cement, and thereafter, the sale, supply, and export of the same. The business income of the respondent-assessee-company is classified under five distinct streams, where tax is deducted at source for three streams, and no tax is deducted for the remaining two. Specifically, the respondent-company: i) imports raw materials for its own consumption, with tax collected at source at the import stage under section 53 of the Ordinance; ii) supplies cement from which tax is deducted at source under section 52, read with rule 16 of the Rules; iii) exports cement from which tax is deducted at source under section 53BBBB of the Ordinance; iv) conducts local sales through dealers from which no tax is deducted at source; and v) conducts local sales without dealers from which no tax is deducted at source.

Section 82C falls under Chapter IX (Assessment) of the Ordinance. As an assessment provision, section 82C applies during the assessment process to determine the minimum tax payable, dealing primarily with income streams where tax has already been deducted or collected at source. The Finance Act, 2016, substituted section 82C with the title "Minimum Tax," which applies to the assessment year 2016-2017; previously, this section was titled "Tax on income of certain persons." However, for the purpose of answering the moot question in these three reference applications, there is no fundamental difference between the previous and present provisions of this section.

To have a clear idea with regard to the legal implication of the provision of section 82C of the Ordinance, on the impugned action, we feel it expedient to reproduce the relevant part of that section, applicable for the assessment year 2016-2017 (Finance Act, 2016) here which runs as follows:

82C. Minimum Tax.-

(1) Notwithstanding anything contained in any other provisions of this Ordinance, minimum tax shall be payable by an assessee in accordance with the provisions of this section.

(2) Minimum tax on income on sources from which tax has been deducted or collected under certain sections shall be the following—

(a) any tax deducted or collected at source under the provisions of sections mentioned in clause (b) shall be the minimum tax on income from the source or sources for which tax has been deducted or collected;

(b) the tax referred to in clause (a) shall be the tax deducted or collected under sections 52, 52A. 52AAA, 52B, 52C, 52D, 52JJ, 52N, 52O, 52R, 53, 53AA, 53B, 53BB,

53BBB, 53BBBB, 53C, 53CCC, 53DDD, 53EE, 53F, 53FF, 53G, 53GG, 53H, 53M, 53N and 55:

Provided that the tax deducted or collected from the following sources shall not be the minimum tax for the purpose of this sub-section-

(i) tax collected under section 52 from the following persons—

a. a contractor of an oil company or a sub-contractor to the contractor of an oil company as may be prescribed;

b. an oil marketing company and its dealer or agent excluding petrol pump station;

c. any company engaged in oil refinery,

d. any company engaged in gas transmission or gas distribution;

(ii) tax deducted under section 53 from import of goods by an industrial undertaking as raw materials for its own consumption;

(iii) tax deducted under section 53F from a source other than the sources mentioned in clause (c) of sub-section (1) and sub-section (2) of that section;

(c) for the sources of income for which minimum tax is applicable, books of accounts shall be maintained in the regular manner in accordance with the provisions of section 35;

(d) income from any source, for which minimum tax is applicable under this sub-section, shall be determined in regular manner and tax shall be calculated by using regular rate on such income. If the tax so calculated is higher than the minimum tax under clause (a), the higher amount shall be payable on such income:

Provided that income shall be determined and tax shall be calculated for certain sources in the manner as specified in the following—

(e) income or loss computed in accordance with clause (d) or the proviso of clause (d) shall not be set off with loss or income, respectively, computed for any regular source.

(3) Where the assessee has income from regular source in addition to the income from source or sources for which minimum tax is applicable under sub-section (2) —

(a) regular tax shall be calculated on the income from regular source;

(b) the tax liability of the assessee shall be the aggregate of the tax as determined under sub-section (2) and the regular tax under clause (a).

(4) Subject to the provisions of sub-section (5), minimum tax for a firm or a company shall be the following—

(a) --------------

(b) --------------

(5) Where the provisions of both sub-section (2) and sub-section (4) apply to an assessee, minimum tax payable by the assessee shall be the higher of

(a) the minimum tax under sub-section (2); or

(b) the minimum tax under sub-section (4).

(6) Minimum tax under this section shall not be refunded, nor shall be adjusted against refund due for earlier year or years or refund due for the assessment year from any source.

(7) Where any surcharge, additional interest, additional amount etc. is payable under provisions of this Ordinance, it shall be payable in addition to the minimum tax.

(8) Where the regular tax calculated for any assessment year is higher than the minimum tax under this section, regular tax shall be payable.

(9) In this section-

(a) "regular source" means any source for which minimum tax is not applicable under sub-section (2);

(b) "regular tax" means the tax calculated on regular income using the regular manner;

(c) "regular rate" means the rate of tax, that would be applicable if the tax exemption or the reduced rate were not granted.

On a plain reading of the provision of sub-section (1), we find that the non-obstante clause *"Notwithstanding anything contained in any other provisions of this Ordinance"* creates a super-priority rule. It means that even if there is a conflict between this section and any other part of the tax law, this section wins. The use of the word "shall" makes the payment of this minimum tax strictly mandatory. The tax authority has no discretion to waive it, and the assesse has no legal loophole to avoid it if they meet the criteria. The true intent of this provision is to establish a tax floor. The Legislature uses this to ensure that entities or individuals who generate significant gross turnover or receive specific streams of income cannot use accounting deductions, allowances, or carry-forward losses to completely wipe out their tax liability. Essentially, it dictates that if your regular tax calculation results in an amount *lower* than the prescribed minimum tax or results in a loss, the assessee must still pay this minimum threshold amount.

For the long list of sections mentioned in clause (b) of sub-section (2) which covers supplies, contractor’s work, service providing, etc., the deducted amount *becomes* the minimum tax. Even if the assessee’s business income stands at Tk.100/- and tax deducted at source (in short, TDS) remains at Tk.120/-, that TDS amount shall be the payable tax on income of Tk.100/-, the assessee will pay tax applying regular tax for other business income and for this reason business income is classified at the time of assessment as well as for the calculation of payable tax, the state retains the collected tax as final payment on that particular class of income. The provision transforms withholding tax from a temporary, adjustable collection mechanism into a permanent, final tax liability. Under these frameworks, TDS serves as an advance payment, but it is neither refundable nor adjustable against any other source of income. If the net income results in a loss, the TDS cannot even be set-off against income from the same business on which no tax was deducted or collected at source. The transaction that suffered TDS will not face further income tax, provided it generates income that remains within the tax threshold calculated applying the regular tax rate; that is, an assessee may avail itself of the opportunity to show income up to its threshold limit relying on that transaction only. However, if the regular tax calculation yields a liability higher than the TDS amount, the excess must be paid under sub-section (8) of this section. While the primary intent of sub-section (2) is to enforce a strict minimum tax regime, the legislature has introduced the proviso as an essential safeguard to prevent capital erosion in strategic sectors. By exempting industrial raw materials and energy infrastructure from the finality of minimum tax, the statute ensures that core working capital is not depleted by a rigid tax floor, thereby balancing revenue collection with economic sustainability.

Clause (c) underscores that a minimum tax regime is not an excuse for sloppy financial record-keeping. Even though the tax floor is predetermined by the deduction at source, the assessee is strictly mandated to maintain proper books of account under section 35 of the Ordinance. This ensures that the tax authorities can still audit the true financial health of the business and verify whether the claimed expenses comply with the provisions of section 30 of the Ordinance. This is particularly crucial because a specified person bears the legal responsibility of ensuring government revenue collection. Furthermore, it prevents other income streams from being hidden under the guise of minimum-tax sources, thereby checking tax evasion across the rest of the enterprise. The provisions of section 35 of the Ordinance regarding maintaining of books of accounts, income for which minimum tax is applicable, were inserted in the Finance Act, 2016, applicable for the assessment year 2016-2017.

Clause (d) specifies the procedure for determining the payable tax. In cases where the tax calculated on taxable income using the regular rate is higher than the TDS for that specific income, the higher amount shall be payable. This means that, alongside the TDS, additional tax must be paid. Conversely, if an individual reflects a taxable income that is fully covered by the TDS, no further tax needs to be paid by that individual. The applicable provision for the assessment year 2015–2016, contained in sub-section (6) of section 82C of the Ordinance, which stated that "any income shown or assessed in excess of the amount determined in sub-section (4) shall be liable to tax at the rate applicable for the assessment year." The legal import and meaning of this provision remain identical for both assessment years 2015-2016 and 2016-2017.

In the preceding assessment years up to 2015-2016, the tax deducted or collected at source falling under sub-section (2) of section 82C was deemed to be the final discharge of tax liability from that source or sources. Sub-section (4) specifies that income from the sources mentioned in sub-section (2) would be determined on the basis of the tax deducted or collected at source and the tax rate or rates applicable for that assessment year. Taxable income under section 82C was accepted only when the calculated regular tax was higher than the TDS amount. In those cases, the regular tax became the payable tax, and the additional amount was due under section 82C (6) of the Ordinance. Otherwise, the income was artificially back-calculated by applying the regular tax rate to the TDS amount.

An example of this back-calculation is provided here for better understanding: If the disclosed taxable income stands at Tk.100/- and the TDS is Tk.120/-, applying the regular tax rate of 35% results in a back-calculated income of Tk.342.86 instead of the actual Tk.100/-, with no refund or adjustment allowed. Conversely, if the TDS stands at Tk.25/- and the taxable income stands at Tk.100/-, the regular tax rate of 35% will be applied, resulting in a tax liability of Tk.35/- and requiring an additional payment of Tk. 10/-

A combined reading of section 82C of the Ordinance, alongside the facts and circumstances of the instant case, reveals that the income streams from which tax has been deducted or collected at source under sections 52, 53, and 53BBBB shall be assessed under section 82C of the Ordinance as a minimum tax. However, proviso (ii) of clause (b) of sub-section (2) of section 82C provides that tax collected under section 53 from the import of goods by an industrial undertaking as raw materials for its own consumption shall not be assessed under section 82C as a minimum tax. This means that only the TDS or tax collected under section 53 of the Ordinance for raw materials shall be excluded from the minimum tax criteria under section 82C, and must instead be assessed as a regular source of income under section 83(2) of the Ordinance. The tax so collected under section 53 of the Ordinance at the time of importing raw materials shall be treated as an advance payment of tax under section 62 of the Ordinance, and credit shall be given in form IT-30 at the time of tax calculation. This exclusion, however, does not imply that the income from the supply of cement from which tax has been deducted or collected at source under section 52, read with rule 16 of the Rules should also be assessed as a regular source of income under section 83(2). On the contrary, it must be assessed under section 82C of the Ordinance as a minimum tax. To summarize section 82C, it is the specific sources of income falling under sub-section (2) of section 82C that are classified for assessment under that section, not the status of the person or importer as a whole. The TDS is made on the specific transaction, and it is that source which is assessed under section 82C of the Ordinance, rather than assessing the importer, "Mr. X".

The DCT very correctly assessed the total income and clearly classified the business income under five distinct heads. The CT(A) also rightly upheld the order of the DCT.

Conversely, the Tribunal failed to exercise due care, caution, and a judicial mind in passing the impugned order. The Tribunal directed the DCT to make a fresh assessment purely under sections 83(2)/84 of the Ordinance, whereas the DCT had originally made the assessment under sections 83(2)/82C of the Ordinance. The provisions of section 84 regarding a "best judgment assessment" are completely inapplicable to the facts of this case. Moreover, the Tribunal surprisingly and repeatedly cited "section 82 (C)" with an erroneous space throughout its order, failing to realize that no such provision exists in the Ordinance in that specific format. Because the Tribunal failed to properly interpret the provisions of section 82C, its decision regarding Question No. (i) is legally unsustainable and untenable in the eyes of the law.

For the reasons and discussions set forth above, and upon considering the relevant legal provisions, we find merit in the applicant's contention regarding question No. (i).

Question Nos. (ii) and (iii) are formulated by the applicant-the CT to determine whether the Tribunal was legally justified in reducing or deleting the disallowances from the profit and loss account, as well as in reducing the estimation of sales in the trading accounts. The main thrust of the argument on behalf of the applicant before this Division is that the respondent, despite claiming to maintain a mercantile or "commercial" system of accounting under section 35(3) of the Ordinance and filing a return accompanied by an audited statement of accounts, argues that since the accounts had been audited by a firm of Chartered Accountants, they should have been accepted in the absence of any objection or finding under Section 35(4)(a) or (b) of the Ordinance.

To gain a clear understanding of the legal implications that the provisions of section 35 of the Ordinance have on the impugned action, we deem it expedient to reproduce the relevant section here, which reads 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 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 the mode of

payments of commercial transactions recorded in such manner and form, 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 ১৮নং 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 to the effect that the accounts are maintained and the statements are prepared and reported in accordance with the Bangladesh Accounting Standards (BAS) and the Bangladesh Financial Reporting Standards (BFRS), and are audited in accordance with the Bangladesh Standards on Auditing (BSA).

(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 assesse 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 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 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 claims including sales made by the respondent-assessee were not accepted because supporting evidence was not fully submitted. It transpires from the materials on record that the disallowances of various heads of expenses as well as estimation of sales and adoption of gross profit made by the DCT were based on the fact that the claims were not verifiable through supporting documents and applying the theory of 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-respondent to provide evidence supporting claims for allowances and deductions. In this regard, we find the tax authority's calculation to be tenable.

The learned Senior Counsel appearing for the respondent 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, 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"

When the DCT, in disallowing certain claims and estimation of sales and adoption of gross profit noted that they were unacceptable due to the failure of the respondent-assessee to provide details and evidence, it became incumbent upon the respondent to produce the requisite documentation. The reasons provided for rejecting the claims served as sufficient notice to the respondent to furnish supporting evidence.

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 respondent-assessee 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.

Considering the facts and circumstances of the case, alongside the existing record, we find that both of the appellate authorities below applied their judicial minds and rightly passed their orders regarding these issues. The CT(A) reduced the estimated sales and upheld the disallowance of claimed expenses from the profit and loss account. The Tribunal reduced or deleted the disallowance of claimed expenses from the profit and loss account, while also reducing the estimated sales explaining the reasons behind its decision. 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 reduction and deletion of the disallowances of claimed expenses, as well as the reduction of the estimated sales, 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.

For the reasons and discussions set forth above, and upon considering the relevant legal provisions and judicial precedents regarding the reduction and deletion of the disallowances of claimed expenses, as well as the reduction of the estimated sales, we find no merit in the applicant's contentions in questions Nos. (ii) and (iii).

Therefore, it is ordered that question No. (i) is answered in the negative that is, against the respondent-assessee and in favour of the applicant and question No.(ii) and (iii) are answered in the affirmative that is, against the applicant and in favour of the respondent-assessee.

Accordingly, the three income tax reference applications succeed 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