

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(STATURY ORIGINAL JURISDICTION)

**INCOME TAX REFERENCE APPLICATION NO. 513 OF 2003**

IN THE MATTER OF:

An application under Section 160(1) of the  
Income Tax Ordinance, 1984

And

IN THE MATTER OF:

***H.R. Textile Mills Ltd.***

....Applicant.

-Vs-

***Commissioner of Taxes, Taxes Zone-07, Dhaka.***

....Respondent.

Ms. Rezina Mahmud, Advocate

..... For the Applicant

Ms. Nasima K. Hakim, Deputy Attorney General,  
with Mr. Elin Imon Saha, and Mr. Ziaul Hakim  
and Md Hafizur Rahman, Assistant Attorney  
Generals.

..... For the respondents

**Heard on 03.08.2023 and 06.12.2023**

**Judgment on 07.12.2023**

**Present:**

Mr. Justice Md. Iqbal Kabir

and

Mr. Justice S.M. Maniruzzaman

**S.M. Maniruzzaman, J:**

The instant reference application under Section 160 of the Income Tax Ordinance, 1984 (in short, the Ordinance) is directed against the order of the Taxes Appellate Tribunal, Division Bench-1, Dhaka (in short, the Tribunal) passed in Income Tax Appeal No.3869 of 2002-2003 dated 09.06.2003 (for assessment year 2001-2002) communicated the same on

24.06.2003 arising out of order of the Deputy Commissioner of Taxes, Companies Circle-21(companies), Taxes Zone-7, Dhaka (in short, the DCT).

Facts, in brief, relevant for disposal of the application, are that the assessee-applicant is a public limited company incorporated under the Companies Act, 1994 and is engaged in the business of Textile processing, Dying, Printing, Mercerizing, Bleaching, calendaring finishing, spinning, weaving, knitting etc, by establishing factory in the name and style “H.R Textile Mills Limited.”. In course of regular business, the applicant submitted income tax return for the Assessment Year 2001-2002 showing income of Tk. 23,75,972.00/- for taxable unit No. 1 and Tk. 1,91,06,726/- for tax-holiday unit No. 2 total Tk. 2,14,82,698. The applicant submitted said return enclosing the books of account certified by the Chartered Accountant.

The DCT calculated the gross profit at the rate of 11.32% and disallowed on estimates on flimsy ground were made both from trading account and profit and loss account which are quoted below;

Local sale	Tk. 3,55,192.00/-
Wages	Tk. 30,80,138.00/-
Stores and spares	Tk. 11,64,010.00/-
Repairs and maintenance	Tk. 8,37,417.00/-
Carriage Inward	Tk. 2,06,676.00/-
Knitting and Processing	Tk. 7,54,412.00/-

The DCT computed total income of Tk. 68,33,643.00/- for unit No. 1 under Section 83(2) and accordingly issued demand notice.

Challenging the said assessment order, the assessee-applicant preferred first appeal before the Commissioner of Taxes (Appeal) Zone-3, Dhaka being appeal No. 326/Coy-21/zone-7/202-203 (in short, CTA) which was heard by the CTA on 14.10.2002 and affirmed the order of the assessment so made by the DCT by his order dated 02.12.2002.

Being aggrieved thereby the assessee-applicant preferred 2<sup>nd</sup> appeal before the Tribunal being Income Tax Appeal No. 3869 of 2002-2003 which was heard by the Division Bench No. 1 on 09.06.2003 and reduced the additions from the above the heads which is noted below;

*“The learned Authorized Representative of the appellant submits that the appeal commissioner was not justified to confirm the disallowance of Tk. 3,55,192.00/- on the plea of non-verifiability of local purchase of Tk. 2,81,86,116.00/-for dyes and chemicals without any justification.*

*Upon examination of records, Tribunal finds that the disallowance is excessive. To meet the ends of justice Tribunal directs the Deputy Commissioner of Taxes to disallow Tk. 1,00,000/- in place of Tk. 3,55,192.00/- disallowed by Appeal Commissioner now under appeal.”*

Being aggrieved thereby the assessee-applicant preferred the instant reference application under Section 160 (1) of the Ordinance formulating the following question of law:

*“On the facts and in the circumstances of the case, whether Tribunal is justified to reduce the disallowances of the expenses on estimate on the clear finding that the disallowances of the expenses were excessive but did not view the matter that the expenditure were expended/ laid out wholly and exclusively for the purpose of business and there is no scope to return”*

Ms. Rezina Mahmud, learned Advocate appearing for the applicant submits that the Tribunal without called for record from the DCT homigically and without verification of verifiable documents allowed the appeal in part and thereby disallowed the applicant expenditure homigically. Ms. Mahmud prays that the question formulated in the instant reference application is to be answered in the negative.

On the other hand, Mr. Ziaul Hakim, learned Assistant Attorney General appearing for the respondent Tax Authority submits that the applicant company totally failed to submit authentic and verifiable documents in favour of submitted audit report before the DCT at the time of hearing. Learned Assistant Attorney General further submits that the notice under Section of 83(1) of the Ordinance 1984 was issued upon the applicant company in order to authentic explanation but applicant failed to submit authentic, verifiable explanation and documents in favour of low gross profit and as such grounds are not justified in the instant case. In view of the above the learned Assistant Attorney General prays that the question formulated in the applicant is affirmative in favour of the Tax department.

We have heard the learned Advocate for the applicant and the learned Assistant Attorney General for the respondent Tax Authority, gone through the reference application, affidavit-in-reply and relevant materials on record appended thereto.

It appears from record that the assessee-company at the time submission return submitted books of account including vouture in support of the income and expenditure for the said assessment year. Considering

the said the DCT partly disallowed the applicant expenditure by his order dated 02.12.2002.

Challenging the said order, the assessee preferred first appeal before the CTA and the CTA after hearing the contending parties allowed the appeal in part holding:

“অপত্তির প্রেক্ষিতে রেকর্ডপত্র পর্যালোচনা করা হইয়াছে। আপীল শুনানীকালেও করাদেশে উল্লেখিত দোষত্রুটি তথ্য প্রমানাদি দ্বারা খন্ডন না করায় উপকর কমিশনার কর্তৃক দাবীকৃত খরচ হইতে অগ্রাহ্যকরন যুক্তিযুক্ত প্রতীয়মান হওয়ায় বহাল রাখা। আপীল দাবী নাকচ করা হইল।”

However, challenging the said order, the assessee preferred 2<sup>nd</sup> appeal before the Tribunal and the Tribunal considering the verifiable documents so submitted by the assessee-applicant before the DCT allowed the appeal in part holding that “the Tribunal examined the record and disposed of the appeal”.

In view of the above it is apparent that the document so submitted by the applicant before the DCT, the Tribunal upon examination of the said verifiable documents passed by the impugned order.

Moreover, the issue involves in the instant reference application has already been settled by the Appellate Division as well as by the High Court Division in several cases.

In this regard, in the case of *Commissioner of Taxes-Vs-Conference and Exhibition Management Service Ltd.* reported in 25 BLC(AD) 14, where the Appellate Division categorically observed:

“When the Deputy Commissioner of Taxes in disallowing certain claims mentioned that the claim of the assessee was not acceptable on account of failure of the assessee to give

*details and evidence in support of the claims, then it would be incumbent upon the assessee to provide requisite supporting evidence. The reason given for rejecting the claim is sufficient notice to the assessee to furnish supporting evidence. .... It is our view 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. .... 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. ....”*

In the case of ***Eskayef Bangladesh Ltd.-Vs-Commissioner of Taxes*** reported in **58 DLR (HCD) 531**, where it has been held;

*“So far as the submission of Mr. Altaf Hossain that section 35 of the Ordinance, 1984 has made it mandatory upon the DCT to accept the audited account if the same is found to have been maintained in a particular method is concerned, we are of the view 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. From the order of the DCT it is clear that he has specified the heads of expenditure which were not verifiable and accordingly, he disallowed some expenses. Thus, defects in the account of the assessee having been clearly pointed out in the assessment order of the DCT, he as well as the Tribunal did not commit any illegality in not accepting the audited account as a whole. We have also perused the decisions cited by Mr Altaf Hossain, as mentioned hereinbefore; we do not dispute the proposition of law as enunciated in the cited cases that if the assessee follows a*

*particular method of account regularly and unless any defect in the account is specifically pointed out by the assessing authority he is to accept the accounting. The account maintained by the assessee having not been totally verifiable, that is, supported by vouchers as pointed out by the DCT is definitely a defect and, therefore, we do not find any substance in the submission of Mr. Altaf Hossain as to the mandate of law to accept an audited account even the expenditures are not verifiable. It is to be noted that though some of the expenses were not verifiable as specifically pointed out by the DCT, yet the Commissioner of Taxes (Appeals) after considering the materials on record reduced the amount of disallowance and also deleted some of the disallowance altogether which were made by the DCT. The Taxes Appellate Tribunal on consideration of the materials on record maintained the said disallowance. Thus, we do not see any reason on the part of the assessee to be aggrieved by the impugned order. However, these are all questions of fact which cannot be re-opened in exercising jurisdiction under section 160 of the Ordinance, 1984.”*

In an unreported judgment dated 04.03.2021 passed in ITR Number 533 of 2014 by the one of Benches of this Division in the case of ***Astech Limited-vs-The Commissioner of Taxes, Taxes Zone-1***, wherein it has been held [one of us was the party of the said judgment];

*“In view of the findings of the Appellate Division so have been given in the case of **Commissioner of Taxes Vs. Conference and Exhibition Management Service Ltd.(supra)** the reason of rejection of the claim of expenditures by the DCT tantamounts to sufficient notice upon the assessee applicant to furnish supporting evidence before the CT(A) and/or the*

*Tribunal in order to satisfy the appellate authority concerned its respective claim by providing necessary documents.*

*In agreement with the observations and findings of the Appellate Division and also in view of the facts and circumstances of the present case we have no manner of doubt to find that since the assessee-applicant had sufficient notice of rejection of its claim pursuant to the order of assessment passed by the DCT concerned; as such, it was liable to provide supporting evidence before the CT(A) and the Tribunal respectively to supplement its claim, which in every occasion it has failed to comply so.”*

Considering the stated circumstance of the case and the decision so cited hereinabove we did not find any illegality in the impugned order.

In the result, the question reformulated in the reference application is decided in the affirmative in favour of the assessee-respondent and against the assessee-applicant.

The Registrar of the Supreme Court of Bangladesh is directed to take steps in view of provision of Section 161 of the Income Tax Ordinance, 1984.

Md. Iqbal Kabir, J:

I agree.