

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

**INCOME TAX REFERENCE APPLICATION NO. 621 OF 2003**

**IN THE MATTER OF:**

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

And

**IN THE MATTER OF:**

***Mrs. Kohinoor Khan.***

....Applicant.

-Vs-

***Commissioner of Taxes, 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,  
12.12.2023 and Judgment on 18.12.2023**

**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.5239 of 2002-2003 (for Assessment Year 1992-1993) arising out of order of the Deputy Commissioner of Taxes, Circle-24, Taxes Zone-3, Dhaka (in short, the DCT).

Facts, in short, are that the applicant was an assessee in Circle-A-1, Dhaka East Zone, Dhaka relating to the Assessment Years 1989-1990 to 1991-1992. Thereafter the jurisdiction was changed to Circle-24, Zone -3, Dhaka. The applicant submitted her tax return for the Assessment Year 1992-1993 on 30.06.1992 showing income of Tk. 30,155/- along with wealth statement showing net wealth of Tk. 40,26,500/-. On receipt thereto, the DCT issued notice under Section 83(2)/93 of the Ordinance and after hearing the assessee-applicant computed income of Tk. 48,000/- by his order dated 28.06.2000.

Suddenly, the Inspector Additional Commissioner of Tax Range -1, Zone 3, Dhaka issued a notice upon the assessee-applicant under Section 120 of the Ordinance on 20.03.2003 for amendment the assessment order for the reason stated in the said notice and directed the assessee to submit reply with evidence within the time prescribed therein. Accordingly the assessee applicant replied to the said notice on 10.07.2002 denying all the material allegations through in the notice and requested to stop the proceeding. The Inspector Additional Commissioner rejected the reply and

thereby treated Tk. 40,26,5000/- being cash and prize bond as shown in the wealth statement by his order dated 20.07.2002.

Pursuant to the said order, the DCT issued IT 30 Chalan on 21.07.2002 upon the assessee-applicant.

Being aggrieved thereby the assessee-applicant preferred first appeal before the Commissioner of Taxes (Appeal) Zone-3, Dhaka(in short CTA) on 19.09.2002 being Income Tax Appeal No. 430/C-24/TZ-3/2002-2003 and after hearing the contending parties the appeal was rejected by the CTA by his order dated 02.12.2002 and thereby affirmed the order of the Inspector Additional Commissioner.

Challenging the first appeal order dated 02.12.2002 the assessee-applicant preferred 2<sup>nd</sup> appeal before the Tribunal being I.T.A. No. 5239/2002-2003. The said appeal was heard by the Division Bench No. 1 and after hearing disallowed the appeal on 04.08.2003.

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

*“On the facts and in the circumstances of the case, Whether Tribunal is justified to affirm the order of the Commissioner (Appeal), who passed his order on consideration of facts and without consideration of law as laid down in Section 120 of the Income Tax Ordinance, 1989.*

*Figure as appeared in the wealth statement as at 30.06.1992 was brought forward from previous year but Tk. 40,26,5000/- was treated as income under Section 19(5)/33 in the order*

*under Section 120 and upholding of such action by the Taxes Appellate authority whether justified.”*

Ms. Rezina Mahmud, learned Advocate appearing for the assessee-applicant mainly submits that the wealth statement was filed under Section 75(d) read with Section 80(a) of the Ordinance and the figures as appeared is brought forward from previous years from 1989-1990 to 30.06.1992 Tk. 40,25,000/- relates to the Assessment Year 1990-1991 and the same fact was stated in the reply of the notice issued under Section 120 as above mentioned but the Tribunal without considering the same disallowed the appeal.

On the other hand, Mr. Ziaul Hakim, learned Assistant Attorney General appearing for the respondent Tax Authority mainly submits that the Tribunal examined the records to see whether the assessee first submitted the return in the Assessment Year 1992-1993 or not, whether cash in hand and prize bond amounting to Tk. 40,26,500/- shown in the return for the Assessment Year 1992-1993 was B/F amount or not, whether the documents (i.e. certified copies of the demand notice, IT-88, It-10B and accounts for the Assessment Year 1989-1990, 1990-1991 and 1991-1992 from previous Circle-A, Dhaka (East) Area, Dhaka) was fake or not. The CTA examined all the documents and records and evidences hold that it was not possible for one of the 23 donors to the assessee-applicant being the sources of fund against cash in hand and prize bond to donate/gift to assessee-applicant. The Tribunal was in the same opinion with the

substance of the order under Section 120 and assessment order under Section 832/93/120 upheld the order of the CT(Appeal). In view of the above the learned Assistant Attorney General prays for the question formulated in the reference application is to be affirmative in favour of the Tax department.

We have heard the learned Advocate and the learned Assistant Attorney General perused the application and materials on record so appended thereto.

The moot issue requires to be addressed in the reference application that gift of Tk. 40,26,500/- was shown in the Assessment Years 1989-1990 to 1991-1992 before the Circle-A-1, Dhaka East Zone, Dhaka by the petitioner from different relatives are genuine or not.

In this regard the IAC disbelieved the gift so claimed by the assessee-applicant in the Assessment Year 1989-1990 to 1991-1992 holding:

“আইটি- ৮৮ ও আইটি ১০ বি এর প্রত্যায়িত নকল প্রাপ্তির সমর্থনে কপিং ফি প্রদানের চালানের কপি উপস্থাপনের জন্য অনুরোধ করা হইল করদাতার প্রতিনিধি সময়ের আবেদন করেন। ফলে ১৭/৭/২০০২ তারিখে পুনরায় শুনানীর দিন ধার্য করা হয়। উক্ত তারিখে করদাতার প্রতিনিধি হাজির হন এবং পূর্বে হাজির হন এবং পূর্বে চাহিদা অনুযায়ী কপিং ফি প্রদানের সমর্থনে চালানের ফটোকপি উপস্থাপনে অপারাগতা প্রকাশ করেন। তাহাগছাড়া প্রত্যায়িত কপি ইস্যু করিবার আবেদনপত্র ইত্যাদি প্রমানাদি উপস্থাপনেও অপারাগতা প্রকাশ করেন।”

The CTA considering the verifiable document rejected the appeal by his order dated 02.12.2002 holding:

“অপীল শুনানীর নির্ধারিত দিনে করদাতার পক্ষে তথ্য উ প্রমানাদি সহ কেহ হাজির না হওয়ায় আপত্তিদের মেধা যাচাই করা গেল না। কর বিভাগের পক্ষে উপস্থিত পরিদর্শী অতিরিক্ত কর কমিশনারের বক্তব্য শ্রবন করা হইল। রেকর্ড পত্র পরীক্ষান্তে দেখা যায় যে, পরিদর্শী অতিরিক্ত কর কমিশনারের এতদসংক্রান্ত গৃহীত কার্যক্রম যুক্তিযুক্ত প্রতীয়মান হইল। বর্ণিত অবস্থায় আপত্তিদের মেধা না থাকায় নাকচ করা হইল। অন্য কোনো আপত্তি আপীল মেমোতে লিপিবদ্ধ করা হয় নাই। আপীল মামলাটি অকৃতকার্য হইল।”

Moreover, the Tribunal considering the evidence on records and hearing the parties rejected the appeal filed by the assessee-applicant holding *inter alia*:

“It is therefore apparent to the Tribunal after going through record that sums shown by appellant as gifts received from 23 closest relatives are not factual and therefore Appeal Commissioner’s order is upheld and the appeal fails.”

In this regard when any reference application filed under Section 160 of the Ordinance 1984 before the High Court Division, The High Court Division, after hearing the parties dispose of the said reference application under Section 161 of the Ordinance. Section 161(2) provides that:

“(1) .....

(2) *The High Court Division shall, upon hearing any case referred to it under section 160, decide the questions of law raised thereby and shall deliver its judgment thereon stating the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with the judgment.*”

In the instant reference application whether the assessee-applicant submitted return for the Assessment Years 1989-1990 to 1991-1992 and wherein the copies of the gifts were submitted in the said return or not the said facts are absolutely disputed question of fact and considering the same both the authorities below rejected the amount of Tk. 40,26,500/- as gift. The aforesaid finding of the authorities below cannot be resolved by the reference application filed invoking under Section 160 of the Ordinance and as such we do not find any merit in the reference application.

In the result, the question formulated in the reference application is decided in affirmative in favour of the Tax Department and against the assessee-applicant.

The Registrar General 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.