

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

WRIT PETITION NO. 13833 OF 2023

IN THE MATTER OF:

Application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

And

IN THE MATTER OF:

Md. Iftekharul Alam

.... Petitioner

-Vs-

National Board of Revenue and others

....Respondents.

Mr. Munshi Moniruzzaman with Ms.
Shuchira Hossain, Md. Adnan Sarker and
Mr. S.M. Shamsur Rahman, Advocates

..... For the petitioner

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

... For the respondents-government

Heard on 12.12.2023

Judgment on: 13.12.2023.

Present:

Mr. Justice Md. Iqbal Kabir

and

Mr. Justice S.M. Maniruzzaman

S.M. Maniruzzaman, J:

In this *Rule Nisi*, issued under Article 102 of the Constitution of
the People's Republic of Bangladesh, the respondents have been called

upon to show cause as to why the order of the Taxes Appellate Tribunal, Division Bench-5, Dhaka in Income Tax Appeal (I.T.A.) No. 6162 of 2022-2023(Assessment Year 2019-2020) dated 13.06.2023 received by the petitioner on 23.10.2023 rejecting the appeal on the ground of non-deposition of the payment required under Section 158(2) of the Income Tax Ordinance, 1982(Annexure-D) should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the operation of the impugned orders dated 24.09.2023 (Annexure-E and E-1) was stayed by this Court for a prescribed period.

Facts, relevant for disposal of the Rule, in short, are that the petitioner is a permanent citizen of Bangladesh and is a businessman. In course of business the petitioner obtained necessary certificates from the concerned Government Authorities for the purpose of continuing his business. The petitioner is a regular Tax Payer and obtained Taxpayer's Identification Number (TIN) Certificate No. 165436954603. The petitioner in course of his business submitted income tax return for the Assessment Year 2019-2020 under the provision of Section 82BB(1) of the Income Tax Ordinance, 1984 (Ordinance). On receipt thereto the Deputy Commissioner of Taxes (DCT) issued notice under Sections 79 and 83(1) of the Ordinance for hearing the matter and after hearing the DCT computed total income of the petitioner of Tk. 3,27,40,479.00/- and

directed the petitioner to pay tax to the tune of Tk. 1,01,61,268.00/- by his order dated 29.06.2022.

Challenging the said assessment order, the petitioner preferred First Appeal before the Commissioner of Taxes (Appeal) beyond the statutory period as prescribed under Section 153 of the Ordinance and the CTA considering the said provision of law summarily rejected the appeal as time barred by his order dated 23.02.2023.

Challenging the order of the CTA the present petitioner preferred 2nd appeal before the Taxes Appellate Tribunal, Division Bench-5, Dhaka being Income Tax appeal No. 6162 of 2022-2023 (Assessment Year 2019-2020). The petitioner at the time of filing appeal before the Tribunal did not deposit statutory amount as prescribed under Section 158(2) of the Ordinance 1984. Considering the said provision, the Tribunal dismissed the appeal for non-depositing of the statutory deposit by its order dated 13.06.2023.

Being aggrieved thereby, the petitioner moved this application before this Court and obtained the Rule along with an *interim* order of stay.

Ms. Shuchira Hossain, the learned Advocate appearing for the petitioner submits that due to wrong advice the petitioner could not deposit the statutory amount as required under Section 158(2) of the Ordinance, 1984 at the time of filing of appeal before the Tribunal, but the petitioner after knowing the said legal requirement filed the instant writ petition depositing 10% of the demanded amount as required under the provision of law. In view of the above, Ms. Hossain submits that for

the interest of the petitioner and for the end of justice a direction may be given upon the respondent concerned providing an opportunity to the petitioner to hear his contention on merit without causing infringement the balance of convenience.

On the other hand, Mr. Ziaul Hakim, the learned Assistant Attorney General for the respondent Tax Authority submits that the petitioner failed to deposit the statutory amount as required under the Ordinance, 1984 for preferring appeal before the Tribunal under Section 158 of the Ordinance and the Tribunal considering the said provision of law legally passed the impugned order and as such there is no illegality in the impugned order. In view of the above he prays for discharging the Rule with costs.

We have considered the submissions of learned Advocate and learned Assistant Attorney General, gone through the writ petition, impugned order, the relevant materials on record so appended thereto and consulted of the provision of law.

Admittedly, the petitioner preferred appeal before the Tribunal without depositing statutory amount as required under Section 158(2) of the Ordinance, 1984. However, Sub-section (2) of Section 158 provides *inter alia*,

“(2) No appeal under Sub-section (1) shall lie against an order of the Appellate Joint Commissioner or the Commissioner (Appeals), as the case may be, unless the assessee has paid ten percent of the amount representing the difference between the tax as determined on the basis of the order of the Appellate Joint Commissioner or the

Commissioner (Appeals), as the case may be, and the tax payable under section provided that on an application made in this behalf by the assessee, the Commissioner of Taxes, may reduce, the requirement of such payment if the grounds of such application appears reasonable to him and shall pass such or derin this regard as he thinks fit within thirty days from date of the receipt of such application.”

In order to prefer appeal challenging the order passed by the CTA, the assessee has to pay 10% tax on the basis of the order of the CTA and the tax paid under Section 74.

In the instant case, the petitioner did not comply with the provision of Sub-section (2) of Section 158 of the Ordinance, 1984 for preferring appeal before the Tribunal.

In view of the above, we do not find any illegality in the impugned order dated 19.06.2023. But, however, the petitioner has deposited Tk. 11,26,831.00/- as 10% of the demanded amount as required under the provision of law by pay order dated 14.11.2023. Since the petitioner has become non suited as such for cause of justice, equity and fairplay, the petitioner should be given an opportunity to have his appeal heard on merit and disposed of by the respondent concerned i.e. Tribunal accordingly.

In view of the stated circumstances, the respondent No. 2, Taxes Appellate Tribunal, Division Bench-5, Dhaka is hereby directed to hear and dispose of the appeal No. 6162 of 2022-2023 (Assessment Year 2019-2020) on merit after re-calling the order dated 16.06.2023 within 3

(three) months from the date of receipt of a copy of the judgment and order but, in accordance with law.

With the above observation and direction, the instant Rule is accordingly disposed of, however, without any order as to costs.

Communicate a copy of this judgment and order to the concerned respondent forthwith.

Md. Iqbal Kabir, J:

I agree.