

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

Present

Mr. Justice Muhammad Khurshid Alam Sarkar

And

Mr. Justice Sardar Md. Rashed Jahangir

Income Tax Reference Application No. 313 of 2019

In the matter of:

Commissioner of Taxes

.... Applicant

-Versus-

Maasranga Communication Ltd.

.... Respondent

Mr. Pratikar Chakma, D.A.G

.... For the applicant

Mr. Bivuti Tarofder, Advocate

.... For the respondent

Judgment on : 31.07.2023

Sardar Md. Rashed Jahangir, J:

The instant reference application has been filed by the Commissioner of Taxes, Taxes Zone-12, Dhaka upon formulating the following 2(two) questions of law arising out of the order dated 30.01.2019 passed by the Taxes Appellate Tribunal, Division Bench-1, Dhaka in Income Tax Appeal No. 2982 of 2018-2019 (assessment year 2017-18):

Questions of Law :

- (I) Whether on the facts and in the circumstances of the case, the Taxes Appellate Tribunal, Division Bench-1, Dhaka was legally justified passing order in upholding the appeal order

of the Commissioner of Taxes (Appeals), Taxes Appeal Zone-1, Dhaka who deleted the DCT's addition of Tk.1,30,00,000/- out of the total bank deposits for Tk.22,34,96,627/- without proper examination and verification of the bank statements as and when the assessee has totally failure to submit the proper and verifiable bank reconciliation statements at the time of framing of the assessment order violation the provision of section 159(2) of the Income-tax Ordinance, 1984?

- (II) Whether on the facts and in the circumstances of the case, the Taxes Appellate Tribunal, Division Bench-1, Dhaka was legally justified passing order in upholding the order of the Commissioner of Taxes (Appeals) who directed the DCT to delete the disallowance made by the DCT under the head Satellite Charges at Tk.50,00,000/- out of total claim of Tk.1,21,02,802/- in admitting the necessary papers and evidences in support of the expenses violating the provision of section 155(6) of the Income Tax ordinance, 1984 as and when the assessee did not submit or produce such documents at the time of hearing of the case before the DCT?

So far the Question No.(II) is concerned, learned Deputy Attorney General contended that the evidence of deduction of tax at source against the payment of Satellite Charges was not submitted before the Deputy Commissioner of Taxes and such evidence of deduction of tax at source was first time submitted before the Commissioner of Taxes (Appeals) [hereinafter referred to as C.T.(Appeals)] and in view of section 155(6) of the Income-tax Ordinance, 1984, the Commissioner of Taxes (Appeals) was not supposed to admit such evidences, submitted first time.

To examine the contention of learned Deputy Attorney General, we have gone through the original assessment order (assessment year, 2017-18), the first appellate order [passed by Commissioner of Taxes (Appeals)] and the order of Tribunal; it appears that the DCT disallowed the expenses of Tk. 50,00,000/- (fifty lac) out of the claimed expenses of Tk.1,21,02,802.00 (Taka one crore twenty one lac two thousand eight hundred two) under the head Satellite Charges in P.L. account and against the said order of disallowance assessee went before the C.T. (Appeals) under আয়কর আপীল পত্র নং ১২৫০/সার্কেল-২৪৫/কর আঞ্চল-১২/২০১৭-২০১৮ and the C.T. (Appeals) upon examination found that the assessee duly deducted tax at source at the time of making payment of Satellite Charges of Tk.1,21,02,802.00 (Taka one crore twenty one lac two thousand eight hundred two), accordingly ordered to delete the disallowance. Challenging the order of C.T. (Appeals), Deputy Commissioner of Taxes filed Income Tax Appeal No. 2982 of 2018-2019 on the following ground:

“On the facts and in circumstances of the case, the learned Commissioner of Taxes (Appeals), Taxes Appeal Zone-1, Dhaka is not justified in deleting the Satellite Charge Tk.50,00,000/- without any cogent reason”.

In the appeal, no where before the Tribunal the DCT made any averment that the evidences of deduction of tax was not produced before him and for the first time, it was produced /submitted before the C.T. (Appeals) (But for the first time, by referring the question No.2 it is submitted that the evidences were not produced before DCT). In reference

application, we are only to look into the questions of law, not questions of fact. The fact, if there is any, of non-depositing evidences before the DCT is a mere question of fact, although the consequence of which may be a question of law. Moreover, before the Tribunal, it was specifically contended by the assessee-respondent that the relevant/supporting evidences were submitted before the DCT as well as before C.T. (Appeals) and Tribunal accepted the said contention in absence of specific contrary averment from the tax department and accordingly upheld the order of the C.T.(Appeals). Under section 160 of the Income-tax Ordinance, 1984, any Reference is to be made formulating questions of law upon the facts revealed from the order of Tribunal or upon the admitted fact. Under the case in hand, the question No.2 was formulated beyond the fact revealed from the order of Tribunal, rather upon a peculiar fact, which has not been supported by the finding of Tribunal, when the Tribunal found contrary to the claim of applicant, impliedly accepting the contention of assessee in absence of any contrary averment or evidence to that effect from the tax department. Thus, the question No.2 is not a proper question of law in view of section 160 of the Income-tax Ordinance, 1984. Furthermore, it is the fact that the assessee has duly deducted tax from the payment of Satellite Charges and this fact has not been denied by the tax department.

So far the question No.1 is concerned, it appears that DCT in his assessment order categorically found that the Bank Deposit of Tk.22,34,96,627.00 (Taka twenty two crore thirty four lac ninety six

thousand six hundred twenty seven) has not been explained properly and accordingly, on the ground of non-verifiability added Tk.1,30,00,000/- (Taka one crore thirty lac) with the income of assessee as an unexplained income (income from other sources). In first appeal, the C.T.(Appeals) found that without pin pointing any specific defect or specifying the amount of not verifiable deposit the DCT disallowed Tk.1,30,00,000/- (Taka one crore thirty lac) under presumption and thereby it was ordered to delete the said disallowance.

It is to be noted here that although DCT in the order of assessment specifically found that the Bank Deposit of Tk.22,34,96,627.00 (Taka twenty two crore thirty four lac ninety six thousand six hundred twenty seven) has not been properly explained in the submitted Bank Reconciliation Statement. In dealing with first appeal, the C.T.(Appeals) did not controvert the said finding of DCT and only found that upon presumption DCT added back an amount of Tk.1,30,00,000/- (Taka one crore thirty lac) with the income of assessee. It is true that DCT has no authority to reject or disallow any amount of taka under any head upon presumption. He is to specify the non-verifiable amount referring to the specific defect found in the audited statement or return submitted by the assessee.

In the second appeal, the Tribunal upheld the order of C.T.(Appeals) without any specific finding of its own. In section 159 of the Income-tax Ordinance, 1984, under sub-section (1) and (2) the Tribunal is empowered to call for such particulars as may be required for

causing further enquiry in respect of the matter arising in appeal and thereafter, it may pass such orders on the appeal as it thinks fit. Under the case in hand, when the question has been specifically raised that the Bank Deposit for an amount of Tk.22,34,96,627.00 (Taka twenty two crore thirty four lac ninety six thousand six hundred twenty seven) was not explained properly, out of which the DCT disallowed a lump-sum amount of Tk.1,30,00,000/- (Taka one crore thirty lac) upon presumption, and the disallowance of the DCT was deleted entirely without having any contrary finding by the C.T. (Appeals), then a duty having been cast upon the Tribunal to examine the matter further or to send it in remand to the concerned DCT for further examination, but the Tribunal failed to perform his statutory duty and as such, this Court is of the view that so far the question of Bank Deposit is concerned, the case is required to send back to the DCT with a direction to examine it afresh after providing the assessee an opportunity of being heard and the DCT is further directed to conclude the hearing with specific findings of fact.

With the above observation the reference application is disposed of without any order as to cost.

The Registrar of the Supreme Court of Bangladesh is directed to take steps in view of the provisions under section 161(2) of the Income Tax Ordinance, 1984.

Muhammad Khurshid Alam Sarkar, J.

I agree.