

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

**Present**

**Mr. Justice Sardar Md. Rashed Jahangir**

**And**

**Mr. Justice Kazi Waliul Islam**

**Income Tax Reference Application No. 82 of 2023**

In the matter of:

R.M. Carton Limited

.... Applicant

-Versus-

The Commissioner of Taxes, Taxes Zone-6, Segunbagicha,  
Dhaka-1000.

.... Respondent

No one appears

... For the applicant

Mr. Md. Monjur Alam, D.A.G. with

Dr. Mohammad Soeb Mahmud, A.A.G.

Mr. Md. Abul Hasan, A.A.G.

Ms. Nusrat Jahan (Shanta), A.A.G. and

Mr. Md. Tareq Rahman, A.A.G

... For the respondent

**Judgment on: 28.04.2025**

**Sardar Md. Rashed Jahangir, J:**

The instant income tax reference application has been filed by the assessee under section 160 of the Income-tax Ordinance, 1984 formulating the fallowing question(s) of law arising out of the order dated 30.06.2016 passed by the Taxes Appellate Tribunal, Division Bench- 2,

Dhaka in Income Tax Appeal Nos. 3184 of 2015-2016 (assessment year 2011-2012):

**Questions of Law:**

*a) Whether on the facts and in the circumstances of the case, the learned Taxes Appellate Tribunal was justified to disregard the accounts maintained under Section 35(3) of the Income-tax Ordinance, 1984 following regular method of accounting and are duly audited by the chartered accountant.*

*(b) Whether in the facts and circumstances of the case the learned Tribunal was justified to affirm the Trading Addition though the DCT accepted previously the disclosed sales supported by Audit- Report.*

*(c) Whether in the facts and circumstances of the case the learned Taxes Appellate Tribunal was legally justified to confirm the disallowances in the profit and loss account without mentioning specific defect when the DCT had not rejected the audit report. Whereas the assessee company maintains books of accounts in accordance with the requirement of Section 35(3) and 30A of the I.T. Ordinance, 1984.*

*(d) Whether in the facts and circumstances of the case, the learned Taxes Appellate Tribunal was justified in not*

*accepting the sales figures of taka 2,26,38,498/- shown by assessee which was supported sales register and Audit Report.*

*(e) Whether in the facts and circumstances of the case, the learned Taxes Appellate Tribunal was justified to affirm Trading addition of taka 14,72,300/-.*

The instant reference application has been appearing in the daily cause list for days together with the name of learned Advocate, but no one appeared before this Court on behalf of the applicant.

From the record, it appears that on being aggrieved by the order of assessment under section 93/83(2) of the Income-tax Ordinance, 1984 of Deputy Commissioner concerned the assessee preferred appeal before the Commissioner of Taxes(Appeals), Taxes Appeal Zone-2, Dhaka being আয়কর আপিল পত্র নং ৯৩৮/সার্কেল-১১৩/২০১৪-২০১৫। The Commissioner of Taxes (Appeals) after hearing the representative of appellant and on perusal of record by his order dated 30.09.2015 rejected that appeal as being incompetent, for non-depositing the admitted tax under section 74 of the Income-tax Ordinance, 1984.

Having been aggrieved by and dissatisfied with the aforesaid judgment and order of the Commissioner of Taxes (Appeals), the assessee filed a second appeal before the Taxes Appellate Tribunal, Division Bench-2, Dhaka being Income Tax Appeal No. 3184 of 2015-2016 (assessment year, 2011-2012).

The Tribunal after hearing both the parties and on perusal of the record dismissed the appeal, affirming the judgment and order dated 30.09.2015 passed by the Commissioner of Taxes (Appeals), Taxes Appeal Zone-2, Dhaka in আয়কর আপিল পত্র নং ৯৩৮/সার্কেল-১১৩/২০১৪-২০১৫, on the finding that the assessee at the time of filing the income tax return under section 75 of the Ordinance failed to make payment the admitted tax under section 74 and thus, the Commissioner of Taxes (Appeals) rightly rejected the appeal as being incompetent. It was also found that the assessee has been failed to comply the provision of section 153(3) of the Ordinance, 1984.

Heard learned Deputy Attorney General, perused the reference application.

It appears that at the time of submitting return under section 75 of the Income-tax Ordinance, 1984, the assessee is required to make payment the admitted tax on the basis of submitted return.

In section 153(3) of the Income-tax Ordinance, 1984 it is stipulated that no appeal shall lie against any order of assessment under this section, unless the tax payable on the basis of return under section 74 has been paid. Meaning thereby, the appeal shall not be competent unless the assessee make payment of the required tax under section 74 of the Ordinance, 1984. From the record it further appears that the appeal was rejected on the ground of non-payment of admitted tax under section 74 of the Ordinance, 1984 by virtue of section 153(3) of the Ordinance, 1984.

The Tribunal did not commit any illegality in upholding the order of the Commissioner of Taxes (Appeals).

Moreover, under section 160 of the Income-tax Ordinance, 1984, the assessee by filing reference application is to refer question(s) of law arising out of the order of Tribunal. On perusal of the question(s) of law referred at paragraph No. 6 of the reference application (reproduced herein before) together with the order of Tribunal, it further appears that those question(s) are not arisen out of the order Tribunal, thus, the question(s) formulated in the reference application are not competent for answering of this Court.

Accordingly, the reference application is rejected as being incompetent.

The order of stay granted earlier by this Court is hereby recalled.

The reference application is disposed of.

**Kazi Waliul Islam, J.**

I agree.