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

INCOME TAX REFERENCE APPLICATION NO. 48 OF 2018
And
INCOME TAX REFERENCE APPLICATION NO. 02 OF 2023

In the matter of:
An application under section 160 of the Income Tax Ordinance, 1984.

In the matter of:
Hatil Complex Limited, Dhaka

…….Applicant

-V E R S U S -
The Commissioner of Taxes, Taxes Zone-7, Dhaka.

.......Respondent.

Mr. Sarder Jinnat Ali, Advocate with
Mr. Md. Delower Hossain, Advocate
.... For the Applicant

Mr. Akhtar Farhad Zaman, D.A.G. with
Ms. Shadia Afrin Shapla, D.A.G. with
Mr. Arif Khan, D.A.G. with
Mr. Sovan Mahmud, A. A. G.
Mr. Md. Faridul Islam, A. A. G.
Mr. Md. Nazmul Haque, A. A. G.and
Mr. Shahinoor Alam Shahin, A.A.G
……..... For the Respondent.

Heard on 21.05.2026 and 11.06.2026 & Judgment on 22.06.2026

Present:
Mr. Justice S.M. Maniruzzaman
&
Mr. Justice Dihider Masum Kabir

Dihider Masum Kabir J:

Since the parties in all these reference applications are identical, and because the questions formulated for answering are similar despite the differing assessment years, these applications have been taken up together for hearing and are being disposed of by this single judgment.

These reference applications under sections 160(1) of the Income Tax Ordinance, 1984 (in short, the Ordinance) are at the instant of the assessee-applicant against the orders dated 30.07.2017 and 13.03.2022 passed by the Taxes Appellate Tribunal, Division Bench-1, Dhaka (in short, the Tribunal) in ITA No.6108 of 2016-2017 for the assessment year 2015-2016 (Reference Application No.48 of 2018) and in ITA No.4674 of 2021-2022 for the assessment year 2020-2021 (Reference Application No.02 of 2023) arising out of First Appeal No.178 of 2016-2017 and No.10 of 2021-2022 passed by the Commissioner of Taxes (Appeals), Taxes Appeal Zone-3, Dhaka [in short, the CT(A)] dated 19.03.2017 and 30.11.2021 respectively.

Facts, relevant for the disposal of these reference applications, in short, are that the assessee-applicant is a private limited company bearing TIN: 811346223901, under Circle-133 (Companies), Taxes Zone-7, Dhaka. The applicant is engaged in manufacturing furniture, doors, windows, and chowkats, and selling and supplying them in the local market. For its business during the years under reference, the applicant company maintained books of accounts employing the international accounting system as adopted in Bangladesh, fully complying with the statutory requirements of section 35(3) of the Ordinance. The day-to-day transactions were recorded in individual vouchers supported by relevant bills. With the help of such books of accounts, the applicant company prepared financial statements reflecting all transactions made during the year. The applicant company also engaged a Chartered Accountant to verify the accounts against relevant documents and evidence. The Chartered Accountant, in line with standard auditing systems, examined the entirety of the records and certified the accounts as fair and correct.

The applicant company filed its statutory income tax returns along with the audited financial statements, showing a total income of Tk. 64,27,322/- and Tk. 5,84,03,532/- for the assessment years 2015-2016 and 2020-2021 respectively. Thereafter, the Deputy Commissioner of Taxes (in short, the DCT) issued statutory notices under sections 79 and 83(1) of the Ordinance. Accordingly, the assessee appeared before the DCT with all relevant papers and documents. The DCT subsequently completed the assessments under sections 83(2) and 82C of the Ordinance, determining a total income of Tk.9,60,47,022/- and Tk.10,23,04,609/- respectively for the assessment years under consideration. While computing the business income, the DCT partly disallowed various heads of expenditure claimed by the assessee in its profit and loss account, and further estimated the sales and trading version.

Being aggrieved by the said assessment orders of the DCT, the applicant-assessee preferred appeals before the CT(A), recorded as Income Tax Appeal No. 178 of 2016-2017 and Income Tax Appeal No.10 of 2021-2022, respectively. In its order dated 19.03.2017 for the assessment year 2015-2016, the CT(A) affirmed the disallowances made under different heads of the profit and loss account on the ground that such disallowances seemed just and fair; however, it reduced the estimated sales on the ground that the DCT's initial estimation was excessive when compared with the past records of the case. For the assessment year 2020-2021, the CT(A) by his order dated 30.11.2021 reduced or affirmed certain disallowances under different heads of the profit and loss account upon considering the facts and legal points of the case, and directed the DCT to accept the disclosed sales on the ground that the disclosed sales of the previous year had been accepted by an order of the Tribunal.

Dissatisfied with the appellate orders of the CT(A), the applicant filed further appeals before the Tribunal. By its order dated 30.07.2017 for the assessment year 2015-2016, the Tribunal maintained the order of the CT(A) regarding the disallowances from the profit and loss account but further reduced the estimated sales on the ground that the estimation sustained by the CT(A) was still somewhat high. By its order dated 13.03.2022 for the assessment year 2020-2021, the Tribunal partially reduced and partially confirmed the disallowances made under different heads of the profit and loss account.

Against the said orders of the Tribunal, these reference applications have been filed by the applicant before this Division under section 160(1) of the Ordinance. Initially, five questions were formulated for answering in reference application No. 48 of 2018. In the midst of the hearing, Mr. Sarder Jinnat Ali, the learned Counsel appearing on behalf of the applicant, submits that question Nos. (ii), (iv), and (v) for the assessment year 2015-2016 are not pressed. Furthermore, in reference application No. 02 of 2023 for the assessment year 2020-2021, only question No. (i) is formulated for answering. Question No. I of both applications is identical.

Consequently, the following questions are formulated for answering:

I. Whether, in the facts and on the circumstances of the case, the Tribunal under sections 159(2)/29/83(2)/30A was justified in upholding the disallowances without pin pointing specific defects in particular items of expenditure and without notice under section 83(2) of the Ordinance further notice calling for more evidence to cause it verified?

II. Whether, in the facts and on the circumstances of the case, the Tribunal in view of the provision of sections 159(2)/ 35(3) of the Ordinance and section 181 of Companies Act, 1994 was justified, in Timber and Plywood accounts, upholding excess estimate of sales and trading version invoking the provision of section 35(4)(c) of the Ordinance without rejecting the books of accounts and the method of accounting?

Mr. Sarder Jinnat Ali, the learned Counsel appearing on behalf of the applicant, submits that the Tribunal was not legally justified in upholding the disallowances without pinpointing specific defects in particular items of expenditure, and without issuing a further notice under section 83(2) of the Ordinance calling for additional evidence to verify the same. He also submits that the Tribunal was not justified in upholding an excessive estimation of sales and the trading version in the furniture account by invoking the provisions of section 35(4)(c) of the Ordinance without explicitly rejecting the applicant's books of accounts and its adopted method of accounting.

In this regard, Mr. Ali further submits that it was the incumbent duty of the concerned respondents, tax authorities, to apply the principles of natural justice for a proper and final assessment of the income and tax liability of the applicant. He contends that in the absence of such compliance, the adjudication vide the impugned decision of the Tribunal is illegal, and any denial of natural justice in this respect is wholly unwarranted. He further submits that the concerned respondent failed to issue a notice under section 83(2) of the Ordinance detailing specific requirements, which was necessary for a proper assessment; whereas, in the instant case, the respondent merely issued a general notice under sections 79 and 83(1) of the Ordinance demanding the production of all papers and documents. In support of his contentions, the learned Counsel relies on the decisions in the cases of *Titas Gas (T and D) Co. Ltd. v. Commissioner of Taxes*, reported in 53 DLR (2001) 209, and *Mark Builders Ltd. v. Commissioner of Taxes*, reported in 59 DLR (2007) 463.

Mr. Ali then argues that the provisions of sections 29(1) and 30A of the Ordinance restrict the disallowance of any business expenditures claimed in the trading and profit and loss account, as well as any estimation of sales in the trading version, unless there is a clear shortage of evidence and after such evidence has been specifically called for to that effect. In the instant case, he submits that the DCT violated these statutory provisions while disallowing the business expenditures and estimating the applicant's sales; unfortunately, the appellate authorities namely the CT(A) and the Tribunal mechanically endorsed these actions while discharging their statutory duties.

Accordingly, Mr. Ali submits that the applicant now seeks constitutional refuge regarding the principles of natural justice in the fair dispensation of law, which cannot be denied by the respondents. To fortify this position, he submits that with the evolution of jurisprudence, the principles of natural justice now form the core framework to ensure fairness. He contends that through all the questions raised in the instant reference applications, the applicant seeks the protection of these principles, particularly within fiscal law as integrated with Article 83 of the Constitution of the People's Republic of Bangladesh, to the extent that fiscal statutes intersect with the fundamental rights and basic obligations of a citizen to pay taxes.

Countering the contentions advanced by the applicant-assessee, Ms. Shadia Afrin Shapla, the learned Deputy Attorney-General appearing on behalf of the respondent-Government, relies on the decision in the case of *Commissioner of Income-Tax, Dacca Zone, Dacca v. M/s Ata Hossain Khan Ltd.*, reported in 28 DLR (AD) 141. She submits that there is no statutory mandate compelling the tax authorities to accept, without question, accounts merely because they have been audited by a certified Chartered Accountant. The requirement of law is that the income tax officer is to compute profits upon such a basis and in such a manner as he may determine.

The learned Deputy Attorney-General further fortifies her submissions by referencing the decision in the case of *Eskayef Bangladesh Ltd. v. Commissioner of Taxes*, reported in 58 DLR (HCD) 531, wherein it was held 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."

The learned Deputy Attorney-General finally urges that the grounds set forth in the reference applications are defective, misleading, and misconceived, and are entirely untenable in the eye of law. Consequently, she contends that the questions raised in these reference applications are liable to be answered in the affirmative that is, against the applicant-assessee and in favor of the respondent.

We have carefully considered the submissions of the learned Counsel appearing for the applicant as well as the learned Deputy Attorney-General for the respondent-Government, and have meticulously perused the reference applications, the affidavit-in-reply, and all other relevant materials placed on record.

The main thrust of the argument on behalf of the applicant before this Court is that since the applicant maintained a mercantile or "commercial" system of accounting under section 35(3) of the Ordinance and filed its returns accompanied by audited statements of accounts certified by a firm of Chartered Accountants, the same should have been accepted in the absence of any specific objection or finding under section 35(4)(a) or (b) of the Ordinance.

To have a clear understanding with regard to the legal implications of the provisions of section 35 of the Ordinance on the impugned actions, we deem it expedient to reproduce the said section here for ready reference, which reads as follows:

“35. Method of accounting.-

(1) All income classifiable under the head "Agricultural income", "Income from business or profession" or “Income from other sources" shall be computed in accordance with the method of accounting regularly employed by the assessee.

(2) Notwithstanding anything contained in sub-section (1), the Board may, in case of any business or profession, or class of business or profession, or any other source of income, or any class of persons or class of income, by a general or special order, direct that the accounts and other documents shall be maintained in such manner and form, and the mode of payments of commercial transactions recorded in such manner and form, as may be prescribed or as may be specified in such direction; and thereupon the income of the assessee shall be computed on the basis of the accounts maintained, payments made and transactions recorded accordingly.

(3) Without prejudice to the preceding sub-sections, every public or private company as defined in the Companies Act, 1913 (VII of 1913) or কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮নং আইন), shall, with the return of income required to be filed under this Ordinance for any income year, furnish a copy of the trading account, profit and loss account and the balance sheet in respect of that income year certified by a chartered accountant to the effect that the accounts are maintained and the statement are prepared and reported in accordance with the Bangladesh Accounting Standards (BAS) and the Bangladesh

Financial Reporting Standards (BFRS), and are audited in accordance with the Bangladesh Standards of Auditing (BSA).

(4) Where-

(a) no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Deputy Commissioner of Taxes, the income of the assessee cannot be properly deduced therefrom; or

(b) in any case to which sub-section (2) applies, the assesse fails to maintain accounts, make payments or record transactions in the manner directed under that sub-section; or

(c) a company has not complied with the requirements of sub- section (3);

the income of the assessee shall be computed on such basis and in such manner as the Deputy Commissioner of Taxes may think fit.

On a plain reading of the quoted provisions of section 35 of the Ordinance, we find that the DCT is indeed empowered to reject an assessee's accounts. However, the power of the DCT to disallow books of accounts is discretionary, not absolute. It is a quasi-judicial function that must be exercised within the bounds of reason and fairness. Any rejection of accounts must be based on tangible defects and supported by a speaking order; otherwise, such an action would constitute an arbitrary exercise of authority that cannot withstand judicial scrutiny.

The records of the instant case reveal that certain heads of expenditure claimed in the profit and loss account, as well as the disclosed sales made by the applicant, were not accepted because supporting evidence was not submitted. It transpires from the materials on record that the disallowances and the subsequent estimation of sales by the DCT were based on the fact that the claims were not verifiable through supporting documents. This does not call into question the acceptability of the accounting system itself, but rather highlights a failure by the assessee-applicant to provide independent evidence supporting its claims for allowances and deductions and disclosed sales. In this regard, we find the calculations and findings of the tax authorities to be entirely tenable.

The learned Counsel appearing for the applicant emphasized that because the accounts presented to the tax authorities had been audited by a Chartered Accountant, they could not be questioned. We find such a submission unacceptable. Even accounts audited by a Chartered Accountant must be supported by primary, verifiable evidence.

In the case of *Bangladesh Sugar and Food Industries Corporation and others v. Md. Shamsuddin Sheikh*, reported in 73 DLR (AD) 46, the Appellate Division held:

> "Every decision is made on the facts and circumstances of a particular case and the decision is to be read along with the facts of that case."

It is noted here that when the DCT, in disallowing certain claims and estimating sales, observed that they were unacceptable due to the assessee-applicant's failure to provide details and evidence, it became incumbent upon the applicant to produce the requisite documentation. The reasons provided in the assessment orders for rejecting the claims served as sufficient notice to the applicant to furnish supporting evidence.

However, from the orders of the Tribunal, we find that for the assessment year 2015-2016, the Tribunal maintained the order of the CT(A) regarding the disallowances from the profit and loss account, while further reducing the estimated sales on the ground that the estimation sustained below was still a bit high. Similarly, by its order dated 13.03.2022 for the assessment Year 2020-2021, the Tribunal partially reduced and partially confirmed the disallowances under different heads of the profit and loss account. The Tribunal is fully competent to decide all questions of fact and law and serves as the final arbiter of factual matters. In the instant case, the disallowance of claimed expenses and the estimation of sales are purely factual matters involving no complex question of law. We are of the view that we should not disturb the factual findings legally settled by the Tribunal.

In the case of *Commissioner of Taxes v. Conference and Exhibition Management Service Ltd.*, reported in 25 BLC (AD) 15, the Appellate Division held:

> ”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. The provision in section 35(3) of the Ordinance, does not exonerate the assessee from supplying evidence in support of the claims for allowances/deductions.”

It is our considered view that while section 35(3) of the Ordinance directs the applicant company to furnish a trading account, a profit and loss account, and a balance sheet certified by a Chartered Accountant, such certification does not dispense with the statutory requirement to produce primary evidence in support of the specific financial claims made therein.

For the reasons and discussions set forth above, and upon considering the relevant legal provisions and judicial precedents regarding the disallowance of unverifiable expenses and estimation of sales, we find no merit in the applicant's contentions.

Therefore, the questions formulated in these income tax reference applications are answered in the affirmative that is, against the assessee-applicant and in favour of the respondent.

Accordingly, these income tax reference applications fail.

However, there shall be no order as to costs.

The Registrar of the High Court Division of the Supreme Court of Bangladesh is directed to take necessary statutory steps in accordance with section 161(2) of the Income Tax Ordinance, 1984, read with section 294(2) of the Income Tax Act, 2023.

S.M. Maniruzzaman, J

I agree.