

[Supreme Court of Pakistan]

Present: Umar Ata Bandial, C.J., Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed, JJ**COMMISSIONER OF INLAND REVENUE, LAHORE---Petitioner****Versus****Messrs SARGODHA SPINNING MILLS (PVT.) LTD. FAISALABAD and others---Respondents**

Civil Petition No.757-L of 2021, decided on 3rd February, 2022.

(Against the judgment dated 01.02.2021 of the Lahore High Court, Lahore passed in S.T.R. No. 17 of 2012)

Sales Tax Act (VII of 1990)---

---Ss. 46 & 47---Sales tax Reference to the High Court---Findings of facts determined by the Tribunal/Appellate Tribunal---Interference by the High Court---Tax Tribunal is the final fact finding body--Only "question of law" is to be examined by the (High) Court in a Sales tax Reference.

Tribunal is the final forum for determination of facts in tax matters. The Appellate Tribunal is therefore the final fact-finding body and its findings of facts are conclusive; the High Court cannot disturb them unless it is shown that there was no evidence on which the Appellate Tribunal could arrive at its conclusion and record such findings, or the same are perverse or based on surmises and conjectures. Further, the High Court cannot go behind any finding of fact recorded by the Appellate Tribunal even on such grounds, unless it has been expressly challenged by raising a 'question of law' relating thereto in the application. Without raising a 'question of law' in the terms, like, 'whether there was evidence to support the finding of the Appellate Tribunal on such and such fact', the High Court is bound by the finding of fact recorded by the Tribunal. Thus, in a case, where no question of law is raised to challenge the finding of fact recorded by the Appellate Tribunal as being not supported by any evidence or being perverse, the finding recorded by the Tribunal attains finality.

Messrs Shah Nawaz v. Commissioner of I.T. 1969 SCMR 123; Commissioner of I.T. v. Messrs Smith, Kline and French 1991 SCMR 2374; Commissioner of I.T. v. Messrs Farrokh Chemical 1992 SCMR 523; Ibrahim Ishaq v. Commissioner of I.T. 1993 SCMR 287; Messrs Irum Ghee Mills v. I.T. A.T. 2000 SCMR 1871; Commissioner of I.T. v. Muhammad Ismail & Co. 1986 SCMR 968 and Oriental investment Co. v. Commissioner of I.T. 1972 PTD 181 ref.

The "question of law" must arise from the decision of the Appellate Tribunal and in the absence thereof, any Reference before the High Court is not maintainable.

Messrs Mohammad Akbar v. I.T.A.T. 1972 SCMR 409; Messrs F.M.Y. Industries v. Deputy Commissioner I. T. 2014 SCMR 907; Messrs PTV Corporation Ltd. v. Commissioner Inland Revenue 2017 SCMR 1136 and Messrs Squibb Pakistan v. Commissioner of I.T. 2017 SCMR 1006 ref.

Sarfraz Ahmed Cheema, Advocate Supreme Court and Naeem Hassan, Secretary (Lit.) FBR for Petitioner. Anis-ur-Rehman, Legal Advisor for Respondents.

Date of hearing: 3rd February, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---The question of law raised before the High Court in the Sales Tax Reference by the petitioner Department was whether the respondent assessee could claim refund on the goods in respect of which sales tax had not been deposited in the government treasury by the respective supplier, hence violating sections 2(14), 7, 8, 8A, 10, 22, 26 and 36 of the Sales Tax Act, 1990 ("Act") .

2. As a matter of background, during the process of refund, a claim of Rs.158,523/- by the registered person (respondent) for tax period 12/2005 was deferred by the department against the invoices issued by the black-listed units. In this regard, the petitioner department issued show cause notices to the registered persons charging them with the violation of various provisions of the Act and the Sales Tax Refund Rules, 2006 ("Rules"). Order in Original dated 18.5.2007 was passed against the petitioner. The appeal before the Collectorate of Customs, Sales Tax and Federal Excise (Appeals) was also dismissed vide order dated 17.12.2007. However, on appeal before the Appellate Tribunal, Inland Revenue, Lahore, the same was

allowed vide order dated 29.9.2011. The Tribunal determined the factual controversy in the case by holding that the department failed to refer or produce any document or evidence to establish that the invoices issued by the suppliers were fake or forged and that the same could not have been issued by the suppliers to the respondent assessee. With this factual determination, the appeal of the respondent assessee was allowed against the department. The department filed a sales tax reference before the High Court. The only question of law raised was that could the Tribunal allow refund based on invoices where sales tax was not deposited in the government treasury by the respective supplier. No question of law specifically regarding gross misreading of evidence by the Tribunal was raised as a question of law.

3. We have heard the learned counsel for the department and have examined the record of the case. It is now well established that the Tribunal is the final forum for determination of facts in tax matters. The Appellate Tribunal is therefore the final fact-finding body and its findings of facts are conclusive; the High Court cannot disturb them unless it is shown that there was no evidence on which the Appellate Tribunal could arrive at its conclusion and record such findings, or the same are perverse or based on surmises and conjectures.¹ Further, the High Court cannot go behind any finding of fact recorded by the Appellate Tribunal even on such grounds, unless it has been expressly challenged by raising a 'question of law' relating thereto in the application. Without raising a 'question of law' in the terms, like, 'whether there was evidence to support the finding of the Appellate Tribunal on such and such fact', the High Court is bound by the finding of fact recorded by the Tribunal. Thus in a case, where no question of law is raised to challenge the finding of fact recorded by the Appellate Tribunal as being not supported by any evidence or being perverse, the finding recorded by the Tribunal attains finality.² It has also been established and clearly borne out from section 47(1) of the Act that the "question of law" must arise from the decision of the Appellate Tribunal and in the absence thereof, any such reference is not maintainable.³

4. In the present case, the High Court has clearly noted in the impugned order that the Tribunal has settled the factual controversy and the department has failed to produce or establish that the tax receipts from the suppliers were illegal or no tax was deposited against them by the suppliers in the Government Treasury. In this background the High Court held that no "question of law" arose from the order of the Tribunal and declined to exercise advisory jurisdiction.

5. For the above reasons, we see no reason to take a view different from the one taken by the High Court. Leave is, therefore, declined and this petition is dismissed.

MWA/C-10/SC Petition dismissed.