

[Supreme Court of Pakistan]

Present: Qazi Faez Isa and Syed Mansoor Ali Shah, JJ
Messrs KOHINOOR SPINNING MILLS LTD.---Petitioner

Versus

COMMISSIONER INLAND REVENUE---Respondent

Civil Petition No. 2006 of 2022, decided on 23rd August, 2022.

(Against the order of Lahore High Court, Lahore dated 21.04.2022 passed in PTR No. 209 of 2012)

(a) Income Tax Ordinance (XLIX of 2001)---

---Ss. 131 & 133---Constitution of Pakistan, Art. 185(3)---Questions of law not raised before the Tribunal or High Court---Supreme Court is not a forum to raise fresh questions of law which have not been examined by the Tribunal or the High Court or do not even arise from the decision of the Tribunal---In numerous cases, a totally new question of law, which has not been raised earlier is agitated before the Supreme Court for the first time without disclosing that it has not been raised earlier---Supreme Court deprecated such practice and observed that the parties must restrict themselves to the questions of law raised and decided by the High Court and desist from introducing a new question of law by giving an impression that the same was not addressed by the forums below.

(b) Income Tax Ordinance (XLIX of 2001)---

---S. 21(e)---Income from business, computation of---Deductions not allowed---Contributions made by taxpayer company to an unapproved gratuity fund---Section 21(e) of the Income Tax Ordinance, 2001 clearly stipulates that the contributions to an unapproved gratuity fund cannot be deducted while computing the income tax of a person under the head "Income from Business"---Admittedly, in the present case, the gratuity fund has not been approved---Contention of the counsel for the tax payer that once the contribution is made to a gratuity fund, section 21(e) is not applicable, is an absurd argument and totally negates the purpose and object of the statutory requirement of an approved gratuity fund---If the argument of the counsel were to hold true, the requirement of an approved gratuity fund is rendered totally meaningless, if the taxpayer simply states making the contribution to an unapproved gratuity fund and thereafter seeks deduction from the income from business--Such an interpretation is not only absurd but is also unsustainable in law---Petition for leave to appeal was dismissed and leave was refused.

Faiz Rasool Jalbani, Advocate Supreme Court for Petitioner (video link Lahore).

Ibrar Ahmed, Advocate Supreme Court for Respondent.

Date of hearing: 23rd August, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---The question of law raised in the Tax Reference filed before the High Court was whether the learned Appellate Tribunal Inland Revenue ("Tribunal") was justified in holding that the contributions made by the petitioner to an unapproved gratuity fund were not allowed to be deducted while computing the income of a person under the head "income from business" under section 21(e) of the Income Tax Ordinance, 2001 ("Ordinance"). The view of the Tribunal was affirmed in the Tax Reference through the impugned order dated 21.4.2022.

2. Learned counsel for the petitioner submits that once the contributions have been made by the petitioner company to the gratuity fund, section 21(e) of the Ordinance is no more applicable. In addition to this argument, he also submitted that the petitioner enjoyed exemption under clause 33 of Part-II of Second Schedule of the Ordinance.

3. As to the latter submission regarding exemption, we note that this contention has not been raised by the petitioner before any fora below. The learned counsel has raised this question before us for the first time in this case. This Court in the instant petition is to examine the judgment passed by the High Court in a tax reference. We have to see if the questions of law raised before the High Court were decided in accordance with the law. This is not a forum to raise fresh questions of law which have not been examined by the Tribunal or the High Court or do not even arise from the decision of the Tribunal. We have also noticed that in number of other cases,

a totally new question of law, which has not been raised earlier is agitated before this Court for the first time without disclosing that it has not been raised earlier. Such a practice is deprecated. Learned counsel for the parties must restrict themselves to the questions of law raised and decided by the High Court and desist from introducing a new question of law by giving an impression that the same was not addressed by the forums below. Even otherwise, on merits, the said exemption is not available to the petitioner, as it applies to the beneficiaries of said fund and not to a person who is making a contribution to a gratuity fund.

4. Coming to the legal question raised in the Reference, section 21(e) is reproduced hereunder for convenience:

21. Deductions not allowed.---Except as otherwise provided in this Ordinance, no deduction shall be allowed in computing the income of a person under the head "Income from Business" for-

(a) - (d)

(c) any contribution made by the person to a fund that is not a recognized provident fund, approved pension fund, approved superannuation fund or approved gratuity fund;

The above provision clearly stipulates that the contributions to an unapproved gratuity fund cannot be deducted while computing the income tax of a person under the head "Income from Business". Admittedly, in this case, the gratuity fund has not been approved. The contention of the learned counsel for the petitioner that once the contribution is made to a gratuity fund, section 21(e) is not applicable, is an absurd argument and totally negates the purpose and object of the statutory requirement of an approved gratuity fund. If the argument of the learned counsel were to hold true, the requirement of an approved gratuity fund is rendered totally meaningless, if the taxpayer simply states making the contribution to an unapproved gratuity fund and thereafter seeks deduction from the income from business. Such an interpretation is not only absurd but is also unsustainable in law.

5. In view of the above, we see no reason to interfere in the well-reasoned impugned order. Leave is, therefore, declined and this petition is dismissed.

MWA/K-15/SC Petition dismissed.